

Chapter 2

The Suggestions on Amending the Second Draft of Tort Liability Law for Examination and Approval

2.1 A Summary of Suggestions on Amending the Second Draft of the Tort Liability Law for Examination and Approval

2.1.1 Introduction

2.1.1.1 The Reason

The Draft of the Tort Liability Law of the People's Republic of China (The Second Draft for Examination and Approval) has been submitted by the Legislative Affairs Commission of the Standing Committee of the National People's Congress to the Standing Committee of the National People's Congress for deliberation. In order to collect the collective wisdom and absorb all useful ideas, the Legislative Affairs Commission of the Standing Committee of the National People's Congress also sends this draft to relevant departments for collecting suggestions, and the Renmin University of China is one department of them. By entrustment of the Renmin University of China Law School, the author of this book carefully and earnestly researched and considered the second draft of tort liability law by using the winter vacation of 2009, and made relevant suggestions of amendment by writing three relevant documents, which are the Summary of Amendment Suggestions of the Tort Liability Law (the Second Draft for Examination and Approval), the Checklist between the Provisions in the Tort Liability Law (the Second Draft for Examination and Approval) and the Provisions Suggested to Amend, and the Provisions Suggested to Amend in the Tort Liability Law (the Second Draft for Examination and Approval).

2.1.1.2 The Evaluation

The author believes that the Tort Liability Law (the Second Draft for Examination and Approval) not only comprehensively summarizes the experiences of tort liability in China for more than thirty years, but also absorbs the experiences of foreign legislations and theory researches, the Tort Liability Law (the Second Draft for Examination and Approval) is thus a preferable legal draft. Its advantages include:

First, its guiding ideology is clear and its pertinence is strong. The Tort Liability Law (the Second Draft for Examination and Approval) provides detailed and specific provisions, and this solves the problem of “the lack of operability”. In addition, the Tort Liability Law (the Second Draft for Examination and Approval) systematically compiles the legal provisions, and this solves the problems of “too scattered” and “the lack of generality”.

Second, its structure is reasonable and its provisions are detailed and specific. The Tort Liability Law (the Second Draft for Examination and Approval) is consisted of the general provisions and specific provisions, and all general provisions have been put into the first three chapters (Chapter 1 to Chapter 3), all enumerative provisions concerning specific issues have been put into the last 7 chapters (Chapter 5 to Chapter 11), and the provisions concerning the subject of special tort responsibilities have been put into Chapter 4. It is thus clear that this is a scientific legislation system of tort liabilities. In addition, the special torts from the angle of comparative law, the number of the enumerative types of special tort liabilities and the specific provisions contained in the Tort Liability Law (the Second Draft for Examination and Approval) exceeds the most relevant provisions contained in civil codes of civil law countries.

Third, the Tort Liability Law (the Second Draft for Examination and Approval) not only pays attention to the hot issues of society, but also has strong characteristics of the times. The reason is the Tort Liability Law (the Second Draft for Examination and Approval) make specific provisions concerning the liabilities of internet torts, the medical damage compensation and the moral damage, and adds the recall system to the provisions concerning production liability.

2.1.1.3 The Purpose

The author tries to carry out certain intentions at the time of offering the suggestion of amending, all these intentions include:

First, trying to offer suggestions on the basis of balancing the interests between protecting the freedom of general behaviors and providing remedy to the victims. The tort liability with ethical justification is the basis of a “fine” tort liability law, and actual fairness and justice is still the soul of law. My amendment suggestions thus correct the current situation that the balance of interest is inclined to the victims in certain aspects rather than paying attention to the ethical justification. My

suggestions thus add some defenses recognized by the international society and eliminate the provisions concerning constructive joint liability of damaging by the high toss act.

Second, trying to make contribution to the normalization of tort liability law, overcome the current defects in grammar, logic and professional terms to avoiding “vulgar” and “politicization”, and delete any unscientific expression, such as the expression of “relevant units and individuals”, and provisions without any sense, such as article 65, 66, 79 and 80.

Third, trying to achieve the dialectical unity between the stability and innovation of legal norms to avoid sink into blindfold innovation or following the old routine. The author’s suggestions restore certain provisions of the General Principles of the Civil Law and judicial interpretations, add the general provisions concerning professional liability, recognize and adopt the provisions concerning tort liability of violating the security obligation. With respect to the provisions contained in the General Principles of the Civil Law and judicial interpretations, we should not treat them with “two extremes” or “two whatevers”.

Fourth, trying to promote the “three absorbing”, which are absorbing the experiences of judicial practices in China, absorbing the experiences of international comparative law such as absorbing the achievements of the legislation of European tort law and the civil code in Holland, and absorbing the excellent researches made by domestic scholars such as the achievements of proposed draft of tort liability law made by Prof. *Wang Liming*, Prof. *Liang Huixing* and other professors. All these will ensure the tort liability law in China can still have international progressiveness.

Fifth, trying to pay attention to solving the disputes of hot issues, fully consider the universality and vitality of social relations adjusted by the tort liability law, add the general provisions of professional liability, the tort liability for the damage caused by the destruction of ecology, etc., and make great contribution to the long term peace and stability.

2.1.1.4 The General Situation

Table 2.1 is a simple statistic of the amendment:

2.1.2 The First Part: Chapter One of the Tort Liability Law (from Article 1 to Article 16)

Changing the contents in original chapter one and the relevant contents concerning the structure of liability in original chapter two to the first section of new chapter

Table 2.1 Simple statistic of the amendment

	The Second Draft for Examination and Approval	Proposed Draft for Modification	Remarks
Number of Chapters	12	12	
Chapters have been Divided to Sections		Chapter I, II, IV and VII	Each section has been entitled
Number of Articles	88	112	
Number of Articles have been added		24	
Number of Articles have been deleted		8	
Number of Articles have been modified		23	
Number of Articles have been moved to other places		6	
Number of Articles have been merged or divided		3	
Number of Articles have not been Modified		33	
Name of Articles	No	Yes	See The Suggested Articles for the Tort Liability Law

one, becoming the liability of multiple infringers to the second section of new chapter one, and becoming the methods of bearing liability to chapter two.

Chapter One: General Provisions

Section One: The Purpose of the Law and the Principles of Liability Fixation

Section Two: The Liability of Multiple Infringers

Section One

(1) Article 1 should be modified to:

This Law is enacted to explicitly defining the tort liability, remedying the damage of victims, preventing torts, and promoting the social harmony and stability.

Reason: the major purpose of tort liability law is to remedy victims of tort behaviors rather than protecting the legal rights and interests of civil subjects. This kind of remedy is implemented on the basis of clarifying the tort liability. Generally speaking, there are no articles concerning punitive compensation (one article contained in production liability is exception) in the Tort Liability Law (the Second Draft for Examination and Approval), publishing infringement acts is thus not the function of this law.

(2) Article 2, 3 and 4.

The stipulation of article 2 is inappropriate. The reason is violating civil rights and interests will not necessarily bear tort liability, such as breaching contract also belongs to violating civil rights and interests, but the party of breaching contract only bears the liability for breach contract rather than tort liability. Moreover, article 2 is incompatible with article 7 and 8, the content of article 2 thus needs to be deleted.

The author suggests amending the contents of article 2 and 3 to the definition of infringer and victim.

Reason: The right of claiming cost of upbringing contained in article 4 should put in the following stipulations concerning compensation rather than the general provisions. The legal results produced by the separation and integration of legal person should shall be stipulated by the legal person system contained in the General Principles of the Civil Law, so it is necessary to establish this article in the tort liability law.

(3) Article 5 and 6 should be moved to the section one of chapter Two.

Reason: Keeping the original structure of the General Principles of the Civil Law of the People's Republic of China.

(4) The "Tort Liability" contained in Article 7 should be modified to "Compensation Liability."

Reason: The tort liability also includes the cessation of infringement, removal of obstruction, elimination of danger, etc. The application of these methods of assuming tort liabilities does not require infringer has fault, so it is necessary to establish an independent article to stipulate all these methods of assuming tort liabilities.

The literal expression of the "presumption of fault" in the second sentence of article 7 needs to be adjusted.

(5) Article 8 should be modified to:

If legal provisions specify that the fault of infringer is not the important condition, such provisions shall govern.

Reason: It is a correct expression concerning non-fault liability.

(6) Add article 8A:

If legal provisions specify that infringer shall assume other tort liability, the infringer shall assume tort liability pursuant to the provisions in Section 3 of Chapter II of this Law.

Reason: It is necessary to distinguish the components of compensation and the components of other methods of assuming tort liabilities.

Section Two

- (1) Reserve article 9 and 10, and modify the second sentence of article 10.
- (2) Modify the last sentence of article 11 to:

If anyone can prove there is no causation between his acts and damage, he shall not assume compensation liability.

Reason: keeping the continuity of judicial interpretation, and many countries have adopted this standard rather than asking doer to prove the specific infringer.

- (3) Add an article concerning the joint and several liability of gang:

Article 11A If certain gang members commit a tort and cause damage, all members of the gang shall bear the joint and several liability; but if any member of gang can prove there is no relation between tort and activities of gang, then the other members of gang shall not bear the joint and several liability.

Reason: This will effectively restrict the torts of gang and this party can consider and study the experiences of the *Dutch Civil Code*.

- (4) Reserve article 12.
- (5) Reserve article 13 and change “the degree of responsibility” to “the degree of cause force”.

Reason: The most important thing shall be done in this phase is to determine how to clarify the distribution of responsibility, and clarifying responsibility shall be considered in the next stage.

- (6) Article 14 shall be reserved after amending, and article 15 and 16 shall be reserved.

2.1.3 The Second Part: Chapter Two of the Tort Liability Law (From Article 17 to Article 25)

Chapter Two: Methods of Assuming Liability

Section One: The Methods of Assuming Liability and the Relation between Tort Liabilities and Other Legal Liabilities

Section Two: The Methods of Compensation

Section Three: Other Methods of Assuming Liabilities

Section One

- (1) The Name of this Section: The Methods of Assuming Liability and the Relation between Tort Liabilities and Other Legal Liabilities.
- (2) Reserve article 17.

(3) Change article 5 to be article 17A and 17B here.

(4) Change article 6 to be article 17C here.

Section Two

(1) The Name of this Section: The Methods of Assuming Compensation Liability.

(2) Reserve article 18, and change the first two paragraphs of article 4 to be the last two paragraphs of article 18 here.

(3) Reserve article 19, and add a paragraph to article 19:

If there is no market price on property loss, a reasonable compensation according to actual situation shall be made.

(4) Move article 20 to the next section

(5) Reserve article 21.

(6) Add the provision to stipulate “gains offset the losses”:

Article 21A If infringer gets benefits from unlawful behaviors conducted by infringer, the compensation for infringer shall deduct the benefits achieved by infringer.

(7) “Share the compensation liability” contained in article 22 shall be amended to “share the damage consequence”.

Reason: This is an issue concerning sharing damage consequence rather than sharing liability if both the victim and the person who commits the act are free of any fault. Therefore, “compensation liability” shall be substituted by “damage consequence”.

(8) Article 23 shall be amended to:

If the infringement on right to life causes death, the close family members of infringer shall have the right to request the mental compensation. If the infringement on right to health causes disability, infringer shall have right to request mental compensation.

Reason: The infringement on right to health will not cause death. Therefore, the provisions on right to life and right to health need to be stipulated respectively.

(9) Article 24 shall be amended to:

If the intentional or negligent infringement on legal rights and interests of personality or personal status relationship such as guardianship results in serious mental injury, the infringer shall have the right to demand mental compensation.

Reason: The right to request mental compensation shall not be limited to the intentional infringer or serious damage; mental damage caused by culpable negligence shall also bear the compensation liability for mental damage; mental damage at the general degree shall be compensated, and the amount of compensation needs to be reduced.

The General Principles of Civil Law has not stipulated the right of status, and certain scholars have a negative attitude on right of status.

Appropriately enlarge the scope of mental compensation to bring it corresponds with the current judicial interpretations, therefore “the legal rights and interests of personality” rather than “right to personality” has been used.

- (10) Add an article to protect the personality interests of the deceased.
- (11) Article 25 shall be divided into two articles:

Article 25 The compensation for the loss caused already shall be paid in a lump sum. The obligation of compensation emerges at the time of occurring damage. If the compensation for future damage has also been paid in a lump sum, a reasonable legal fruits shall be deducted.

Article 25A The compensation for medical expense, nursing expense, rehabilitation expense, expense for self-help tools and living expense of infringer in the future can be paid by the way of regular payments.

If the interested parties reach an agreement on adapting regular payments, the people’s court needs to confirm after reviewing whether the agreement breaks the law.

Certain guarantee shall be provided for the application of regular payments.

Section Three

- (1) The name of this section: Other Methods of Assuming Liabilities.
- (2) Establish articles to stipulate stopping the infringement, removing the obstacle, eliminating the danger, returning the property, restoring to original condition or state, compensating for damage, eradicating effects and restoring reputation, and making an apology.

2.1.4 The Third Part: Chapter Three of the Tort Liability Law (From Article 26 to Article 30)

- (1) Merge article 26 with article 27, and change the term of “fault” in article 26 to “negligently”.

Reason: The fault and negligence of infringer can be defense for mitigating or exempting from liability.

- (2) Add defense of performing duty according to law (article 26A).
- (3) Add defense of self-help (article 26B).
- (4) Add defense of consent and voluntarily bear risk (article 26C).
- (5) Reserve other articles (article 28 to 30).

2.1.5 The Fourth Part: Chapter Four of the Tort Liability Law (From Article 31 to Article 38)

This chapter can be divided into three sections.

Section One: Liability of Guardian and Liability for School Accident

Section Two: Liability of Employer, Contractor and Voluntary Worker

Section Three: Liability of Network Operator and Liability of Obligor of Safety Protection

Section One

- (1) Reserve article 31 and 32.
- (2) Change article 36, 37 and 38 to article 32A, 32B and 32C.

Section Two

- (1) Change article 33 to:

Where any person who is used by user causes damages to others due to performance of his task, the user shall bear tort liability.

The relation between person being used and user will be determined under following circumstances:

- (a) whether user has right to instruct the person being used; and
- (b) whether person being used is working for the interests of user.

- (2) Add article 33A:

Any person being used, who accepts the instructions from two or more users or works for two or more users, causes damages to others due to performance of his task, multiple users shall joint bear the tort liability.

- (3) Add article 33B:

If, during a period of secondment, the seconded working personnel cause damages to others due to performance of their tasks, the party accepting secondment shall be subject to tort liability. If the seconding party commits fault, it shall bear supplementary liability correspondingly.

- (4) Add article 33C:

Where any person being used intentionally causes damage to others or causes damage to others due to culpable negligence, this person and the user shall bear the joint and several liabilities.

Section Three

- (1) Reserve article 34 for the liability of Internet service provider.
- (2) Reserve article 35 for the liability for infringing the duty of security protection.

2.1.6 The Fifth Part: Chapter Five of the Tort Liability Law (from Article 39 to Article 45)

The provisions concerning production liability in China are mature. The guiding ideology of modification is: the provisions concerning production liability in the Production Quality Law shall not be applied, so the conceptions of “production”, “defects”, etc., shall be defined in the tort Liability Law.

- (1) Change the first paragraph of article 39 to article 39, and make provision on the scope of compensation:

A producer shall bear compensation liability for property damages to other persons due to defects existing in the products.

Reason: Article 41 of the Production Quality Law is the same provision, and this is also the rule recognized internationally that the compensation for value of defective product shall be adjusted by the contract law (such as article 40 of the Production Quality Law stipulates that the sale contract is the premise of the compensation liability).

- (2) Defense shall be stipulated independently (article 39A).
- (3) Add an article to define and classify “defects”:

Article 39B Defects refer to any unreasonable danger which may endanger the personal and property security of the others, includes design defect, production defect and warning defect.

Reason: There is a provision concerning defect in article 46 of the Production Quality Law. The common theory is that defect can be divided into three types, this has been accepted by China, and make a provision shall help the people’s court to correctly determine the existence of defect in practice.

- (4) Add an article to define “production”:

Article 39C Production refers to any movable property processed and produced for sell. Electric current in wire transmission and substance in pipeline transport belongs to production.

The provisions in this section shall not be applied to the construction work, but the construction material, components and equipment used for construction work belong to production as mentioned in preceding paragraph, and the provisions in this section shall be applied.

Reason: Production liability shall be contained in the Tort Liability Law due to its independent character.

- (5) Add an article to define “producer”:

Article 39D Producer refers to any practitioner engaged in producing and processing production; any person, as the producer of a production, demonstrates his

name, title, corporate name or trademark person on the production; or any natural person, legal person or other organizations who can be deemed as the actual producer of the production according to the manufacture, process, form of selling, or other matters.

The importer of production shall be deemed as the producer of imported production.

Reason: The specific definition of producer is significant in judicial practice, and a clear judgment rule is thus necessary.

(6) Reserve article 40, 41, 42, 43 and 44.

(7) Add an article to stipulate the limitation of action and other important matters:

Article 44A The validity period for claiming for compensation for damages due to defects of products is two years, starting from the date when the parties concerned is notified or should have known the matter.

The right of request for compensation claim for damages done due to defects of products shall lose effect after the tenth year after the products shall lose effect after the tenth year after the products with defects that cause damages was first delivered to the users or consumers. However, cases in which the specified safe use period has not been exceeded are exceptions.

(8) Reserve article 45.

2.1.7 The Sixth Part: Chapter Six of the Tort Liability Law (From Article 46 to Article 52)

The guiding ideology of this chapter is make complete provisions on liability for caused by traffic accident, and all these provisions shall not rely on the Road Traffic Safety Law.

(1) Article 46 of the Second Draft for Examination and Approval shall be substituted by article 76 of the Road Traffic Safety Law.

Reason: As an administrative law, the Road Traffic Safety Law shall not keep civil law provisions, and this will help the interested parties to further understand the law.

(2) Reserve article 47, 48 and 49.

(3) Add article 49A:

If the motor vehicle causes traffic accident and damages the others at the time of operating an affiliated business, the operator of affiliating shall bear the

compensation liability. If the operator of affiliating business is unable to bear the compensation liability, the owner of affiliated business shall bear the additional liability.

Reason: The traffic accident caused by operating an affiliated business often occurs, there thus should be a provision. Article 48 mentioned in preceding paragraph cannot be applied to the traffic accident caused by operating an affiliated business due to the owner of affiliated business may charge fee and make security management and education.

(4) Reserve article 50, 51 and 52.

(5) Add article 52A:

Where if the traffic accident caused by the fault of pedestrian or party of non-motor vehicle damages the party of motor vehicle or the other, the pedestrian or the party of non-motor vehicle shall bear compensation liability according to the first paragraph of article 7 of this law.

Reason: Although these cases shall be handled according to the principle of fault liability, these cases belong to traffic accidents, and the public may believe that the pedestrian or the party of non-motor vehicle shall not bear compensation if we do not make a provision in the Tort Liability Law. In addition, this kind of provision has value in lawmaking policy, which reflects the spirit of equal protection for both parties in traffic accident.

2.1.8 The Seventh Part: Chapter Seven of the Tort Liability Law (From Article 52 to Article 66)

This chapter shall be entitled as “Professional Liability” and divided into two sections:

Section One: General Provisions

Section Two: Liability for Medical Damage

Section One

(1) Add an article to define “profession” and “professional Activities”:

Article 52B A professional refers to the person who has intellectual skill, whereby service is offered to the public, usually though not inevitable for reward and requiring professional standards of competence, training and ethics, typically reinforced by some form of official accreditation accompanied by evidence of qualification.

Professional activities refer to the activities that professional offers his intellectual skill to the public. At the time of offering intellectual skill, any professional shall accord with relevant laws, regulations, industry standards and operating instructions.

- (2) Add an article to stipulate the doctrine of liability fixation and subject of professional liability:

Article 52C Any professional shall bear tort liability if he intentionally or negligently causes damage to his client at the time of providing professional service.

If two or more professionals sign legal documents, provide professional opinions or make professional decision jointly, and cause damage to the others, then they shall bear the joint and several liability.

If any professional, who is employed by a special practicing institution, engages in practicing activities in the name of this special practicing institution, then this special practicing institution shall bear tort liability if the professional causes damage to the others at the time of practicing. After making the compensation, the special practicing institution shall have recourse against the professional.

- (3) Add an article to stipulate the duty of care of professional:

Article 52D At the time of engaging in practicing, any professional shall maintain the legal rights and interests of his clients by exercising a high degree of duty of care, duty of loyalty and duty of maintaining confidentiality.

The violation of duties as mentioned in the preceding paragraph shall be presumed as being at fault.

- (4) Add an article to stipulate the burden of proof in the case concerning professional liability:

Article 52E The infringe shall provide prima facie evidence to prove the professional or practicing institution is at fault and there is causation between the fault of professional or practicing institution and the damage of infringe.

If prima facie evidence is able to prove the fault and causation, the fault and causation shall be presumed to be existed unless the professional and his practicing institution are able to prove there are no fault and causation.

The profession and his practicing institution shall provide all records and materials concerning the case, and the fault and causation shall be presumed to be existed if they forge, falsify or destroy the relevant records and materials.

Section Two

- (1) Reserve article 53.
- (2) Delete article 54 due to this article repeats with article 52C (3) of this law.
- (3) Reserve article 55 to article 62, and change “presumed” contained in article 58 to “affirmed”.
- (4) Delete article 63 due to this article repeats with article 52E (3) of this law.
- (5) Delete article 64, 65 and 66:

Reason: Article 64 repeats with article 52D of this law; and article 65 and 66 does not belong to the provisions of tort liability, and the author suggests that these two articles shall be stipulated in other law.

2.1.9 The Eighth Part: Chapter Eight of the Tort Liability Law (from Article 67 to Article 71)

The provisions in this chapter are appropriate; in addition, certain liability shall be stipulated for the damage caused by destructing ecology.

- (1) The name of this chapter shall be amended to “Liability for Polluting Environment and Destructing Ecology”.
- (2) “Environmental Pollution” contained in article 67 shall be changed to “polluting environment”.

Reason: This is an issue of grammar.

- (3) Reserve article 68.
- (4) “Environmental Pollution” contained in article 69 shall be changed to “polluting environment”.
- (5) Reserve article 70 and 71.
- (6) Add an article to stipulate the tort liability for damage caused by destructing ecology:

Article 71A Any person who destructs ecology and causes damage of other persons shall bear tort liability according to the provisions in this section.

Reason: The people’s court has adopted an understanding on “polluting environment” in a narrow sense, and this will cause the infringe cannot receive remedy according to the current provisions. The Tort Liability Law shall solve this problem.

It is similar to the damage caused by polluting environment, damage caused by destructing ecology shall adopt the non-fault liability. Such provision will be benefit to not only remedying infringe but also protecting ecology and promoting harmony between human being and the nature.

2.1.10 The Ninth Part: Chapter Nine of the Tort Liability Law (From Article 72 to Article 77)

- (1) The chapter name shall be changed to “Risk Liability”.

Reason: Enlarge the scope of adjustment.

- (2) Incorporate the liability for constructor to this chapter.
- (3) Article 72 shall be changed to:

Anyone who engages in work that involves a high degree of danger, such as high altitude, high pressure and high speed means of transportation, and causes damage to others shall bear tort liability.

Reason: Certain contents in article 72 of the Second Draft for Examination and Approval repeats with article 74 of the Second Draft for Examination and Approval.

Any work that involves a high degree of danger shall not limit in high altitude and high pressure, certain space for extension by judicial interpretation shall be reserved.

(4) The first paragraph of article 87 shall be moved to here as article 72A:

If any damage is caused to others due to failure to place obvious signs and take safety measures when digging holes or repairing or installing underground facilities in a public place, on a roadside or in a passageway, the constructor shall bear tort liability.

Reason: The liability of constructor is the liability for damage caused by physical items rather than risk liability brought by behaviors of constructor; and this kind of liability shall not be incorporated into risk liability, and fault presumption shall be applied.

(5) Article 73 shall be modified to:

If any nuclear material, nuclear facilities or civil aircraft causes damage to others, the owner and manager of nuclear material or operator of nuclear facilities and civil aircraft shall bear tort liability, and no liability shall be assumed by the operator if it can prove that the damage has been caused by the victim intentionally.

Reason: In case of damage caused by any nuclear material, the owner and manager of nuclear material rather than operator of nuclear material shall bear tort liability, and the unclear material is not in the state of operation.

(6) Article 74 shall be modified to:

If any possession or use of high hazard physical items including inflammable, explosive, supertoxic or radioactive substances causes damage to others, the possessor or user shall bear tort liability, and no liability shall be assumed by the possessor or user if it can prove that the damage has been caused by the victim intentionally or by a force majeure event.

Reason: The expression of “the corresponding units and individuals” is not methodical, and the expression here shall be corresponding to the reason of assuming liability for “possession” and “use”. Therefore, “the corresponding units and individuals” shall be substituted by “possessor” and “user”.

(7) Article 75 shall be modified to:

If any damage is caused due to any loss or abandonment of high hazard substances, the person who loses and abandons high hazard substances shall bear tort liability.

Reason: The reason of assuming tort liability shall be corresponding to the person liable, so it is not necessary to consider the owner and manager here.

(8) Article 76 shall be modified to:

If any damage is caused due to the unlawful possession of any high hazard items, the unlawful possessor shall bear the tort liability. If the owner of such high hazard

items is unable to prove that it has exercised a high degree of care, it shall be jointly and severally liable with the unlawful possessor.

(9) Article 77 shall be modified to:

If the operator or constructor of high hazard activities and the owner or manager of high hazard items has taken safety measures and performed the obligation for warning, their compensation liability for any damage caused by unauthorized entry into any area that involves high hazard activities or where high hazard substances are stored shall be mitigated.

Reason: The requirement of grammar and the “constructor” contained in article 72A shall be included.

2.1.11 The Tenth Part: Chapter Ten of the Tort Liability Law (From Article 78 to Article 81)

(1) The chapter name shall be changed to “Liability for Harm Caused by Raising Animals”.

(2) Add provisions for damage caused by scattered animals.

(3) Article 78 shall be modified to:

If a domestic animal causes damage to others, the owner or keeper of the animal shall bear tort liability. The liability of the owner or keeper of animals shall be exempted or mitigated if it can be proved that the damage is caused by the gross negligence of the infringer, and the owner or keeper of animals shall not bear tort liability if it can be proved that the damage is caused by the willful intention of the infringer.

Reason: The subject of liability shall be “owner” or “keeper” rather than “raiser”; if the owner or keeper of animals can be exempted or mitigated due to the gross negligence of the infringer, then the owner or keeper of animals shall not bear tort liability due to the willful intention of the infringer.

(4) Delete article 79.

Reason: This article does not contain any legal provision, and the preceding article has already contained this article; with respect to the tort liability for damage caused by raising animals, the non-fault liability shall be applied, and whether certain provisions have been infringed is not related to the construction of liability and the mitigation of liability.

(5) Delete article 80.

Reason: Damage caused by animals raised by a zoo is the same with the damage caused by animals raised by a family, and the non-fault liability shall be applied; and the provisions in the General Principles of Civil Law is correct, and there is no reason to change these provisions.

(6) Add article 80A:

If the damage and loss caused by fighting between scattered animals, and both owners and managers of scattered animals are free of any fault with respect to the occurrence of damages, then both parties shall equally share the harmful consequence.

If one party or both parties are attributable to the damage, then they shall share the harmful consequence correspondingly.

If there is local custom, such custom shall be followed.

Reason: Damage or loss caused by fighting between scattered animals often occurs, therefore this circumstance shall be stipulated in the Tort Liability Law; the principle of equally sharing the harmful consequence shall be applied rather the principle of non-fault liability; the principle of fault liability shall be applied if one party or both parties are attributable to the damage; if there is local custom of handling with such issue, such custom shall be followed.

(7) Make provisions for damage caused by wild animals protected by the state, so add article 80B:

Where damage caused by wild animals protected by the state, the infringer shall request the department in charge at the county level for compensation.

Reason: Any person shall be remedied under this situation, and the supporting provisions shall be established in the future.

(8) Change the term of “animals” in article 81 to “raising animals”.

2.1.12 The Eleventh Part: Chapter Eleven of the Tort Liability Law (From Article 82 to Article 87)

(1) The chapter name shall be changed to “Liability for Damage Caused by Physical Items”.

Reason: Unmeasurable substances cannot be contained in “Objects”.

(2) Certain provisions concerning unmeasurable substances shall be added.

(3) Reserve article 82.

(4) Delete article 83

Reason: This kind of presumption lacks the legal basis; this presumption is not supported by foreign legislations and practices; this presumption makes the Tort Liability Law losing its basis of fairness and justice; and this presumption will infringe the freedom of the whole social members.

(5) Reserve article 84.

(6) Change article 85 to:

If any damage is caused to others due to the pile-up, dumping or scattering of any physical items that hamper passage on public roads, the infringer of pile-up, dumping or scattering of any physical items shall bear tort liability; and if the manager of road is at fault, the manager of road shall bear corresponding tort liability.

(7) Change article 86 to:

If any damage is caused to others due to the breaking of forest trees at public palaces or public road, the owner or manager of the forest trees shall bear tort liability if it cannot prove that it is not at fault.

(8) Delete the first paragraph of article 87.

Reason: This paragraph is the stipulation concerning liability for behavior rather than liability for damage caused by physical items, so this paragraph shall be moved to the chapter of risk liability as article 72A.

(9) Reserve the second paragraph of article 87 as article 87.

(10) Add article 87A:

If any damage is caused to others by the escape of water or other liquid, stive, gas and light wave, the owner or manager of this substances shall bear tort liability. If it can be proved that it has performed its management duties, the owner or manager of this substances shall not bear tort liability.

If the preceding paragraph constitutes liability of polluting environment, the infringe shall have right to request remedy according the Chapter VIII of this law.

Reason: The case of damage caused by the escape of unmeasurable substances often occurs, and certain provisions thus are necessary (the liability of fault presumption). If the escape of unmeasurable substances reaches the level of polluting environment, the infringe shall have right to request remedy according the Chapter VIII of this law.

2.1.13 The Twelfth Part: Chapter Twelve of the Tort Liability Law (Article 88)

Reserve article 88.

2.2 A Check List Between Articles of the Second Draft of Tort Liability Law for Examination and Approval and Articles of Amending Suggestion

Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
Chapter I General Provisions	Chapter I General Provisions	Adjusting the structure of Chapter I and II of the Second Draft for Examination and Approval
	Section One: Legislative Purposes and Doctrine of Liability Fixation	Adding a name of section one
Article 1 This Law is enacted to protecting the legal rights and interests of civil law parties, explicitly defining the tort liability, preventing and punishing torts, and promoting the social harmony and stability	Article 1 This Law is enacted to explicitly defining the tort liability, remedying the damage of victims, preventing torts, and promoting the social harmony and stability	Further clarifying the legislative purpose of the Tort Liability Law in order to make a difference with the General Principles of Civil Law
Article 2 Any person who infringes on civil rights and interests shall assume the tort liability	Article 2 Infringer shall bear the tort liability pursuant to this Law. “Infringer” as addressed herein refers to any natural person, legal person or other organizations who commit tortious actions to infringe other persons’ personal and property rights; owner, manager or user of physical items, if the damage is caused by physical items; guardian, school or other educational organization, if damage is caused by a person without or with limited capacity for civil conduct; and employer if the damage is caused by employee	Infringing civil rights and interests will not necessarily bear tort liability, such as breach of contract also belongs to infringing civil rights and interests, but break-promiser shall bear liability for breach of contract rather than tort liability Defining “infringer” is beneficial for developing the following articles. This is a general issue, which shall be stipulated in this article
Article 3 The infringe shall have the right to request the infringer to assume tort liability If the infringe dies, his close family members shall have the right to request the infringer to assume tort	Article 3 The infringe shall have the right to request the infringer to assume tort liability. “Infringe” as addressed herein refers to any natural person, legal person or other organizations whose civil rights protected	With respect to the legal consequences caused by the division and combination of legal person or other organizations, the General Principles of Civil Law shall be applied, and it is not

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
liability. If the infringer is an entity, and such entity is divided or merged, the entity succeeding to the rights shall have the right to request the infringer to assume tort liability	pursuant to this Law have been infringed. The exercise of the right to request compensation for adverse consequence caused by the infringement on other person's civil rights needs to be explicitly stipulated by law	necessary to make provisions herein again Defining "infringer" is beneficial for developing the following articles. This is a general issue, which shall be stipulated in this article
Article 4 If the infringer dies or becomes physical disability, any person supported by him shall have the right to request the infringer to assume tort liability If the infringer dies, the person who pays for the infringer's medical expenses, funeral expenses and other reasonable expenses shall have the right to request the infringer to compensate for the foregoing expenses, except for the expenses already paid by the infringer	Deletion	As a part of right to request compensation for personal injury, right to request cost of upbringing shall be put into the provisions of compensation due to it is not a general issue. Therefore, this article shall be moved to paragraph 2 and 3 of article 18
Article 5 Where the infringer shall assume administrative liability or criminal liability for the same act, assumption of the aforesaid liability shall not affect the assumption of the tort liability (if any) Where the infringer shall assume the tort liability as well as the administrative liability or criminal liability for the same act, and the infringer's property is not sufficient for the payment, the tort liability shall be prioritized	Move to article 17A of the Section 1 of Chapter II	The original framework of the General Principles of Civil Law shall be reserved
Article 6 If any other laws set forth special provisions on the tort liability, those provisions shall be followed	Move to article 17C of the Section 1 of Chapter II 1 of Chapter II	The original framework of the General Principles of Civil Law shall be reserved

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
Chapter II Constitution of Liability and Methods of Assuming Liability	Deletion	This chapter shall be contained by the chapter I
Article 7 If any person, through his own fault, infringes on other people's personal and property rights and causes damage, he shall assume the tort liability. If the person is presumed to be at fault according to the law, and he is unable to prove that he is not at fault, then he shall assume the tort liability	Article 7 If any person, through his own fault, infringes on other people's personal and property rights and causes damage, he shall assume the compensation liability. If the person is presumed to be at fault according to the law, and he is unable to prove that he is not at fault, then he shall be affirmed as being at fault	Tort liability also includes stopping the infringement, removing the obstacle, eliminating the danger, etc. These methods of assuming tort liability have not request the infringer shall be at fault, and this shall be stipulated in an independent article (article 8A). Therefore, "tort liability" in this article shall be changed to "compensation liability" in order to make the expression become more accurate
Article 8 If any person is free of any fault, and any legal provision specifies that he shall assume the tort liability, such provision shall govern	Article 8 If any legal provision specifies that the fault of infringer is not the important condition, such provision shall govern	This is a correct expression on non-fault liability. The condition of "non-fault liability" refers to the structure of liability will not be considered according to law rather than infringer has no fault
	Article 8A If any legal provision specifies that infringer shall assume other tort liability, infringer shall assume tort liability pursuant to the provisions in Section 3 of Chapter II of this Law	It is necessary to distinguish the constitutive elements of compensation with the constitutive elements of other methods of assuming tort liability. This provision lays the foundation for the specific provisions contained in section three of chapter II
	Section Two: Liability for Multiple Torts	Add a new section or make this section become a new chapter
Article 9 If two or more persons jointly commit a tort and cause damages to other people, they shall bear joint and several liability	Article 9 If two or more persons jointly commit a tort and cause damages to other people, they shall bear joint and several liability	Reserve the provision of the General Principles of Civil Law The legislation does not need to select subjective doctrine or objective doctrine, and this shall be solved by judicial practices and theoretical research

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
<p>Article 10 Anyone who abets or helps another to commit a tort shall bear the joint and several liability with the one who commits the act</p> <p>Anyone who abets other people without capacity for civil acts to commit a tort shall assume the entire liability. Anyone who abets other people with limited capacity for civil acts to commit a tort shall assume the major liability. Anyone who helps other people without or with limited capacity for civil acts to commit a tort shall assume the liability correspondingly</p>	<p>Article 10 Anyone who abets or helps another to commit a tort shall bear the joint and several liability with the one who commits the act</p> <p>Anyone who abets or helps other people without capacity for civil acts to commit a tort shall assume the entire liability. Anyone who abets or helps other people with limited capacity for civil acts to commit a tort shall assume the major liability</p>	<p>The second paragraph shall absorb the achievements of judicial interpretations</p>
<p>Article 11 Where two or more persons carry out any act that jeopardizes other people's personal or property safety, and the act of one or more persons causes damages to other people, if the specific infringing person can be determined, the infringing person shall assume liability; if the specific infringing person cannot be determined, all the persons who commit the act shall bear the joint and several liability</p>	<p>Article 11 Where two or more persons carry out any act that jeopardizes other people's personal or property safety, and the act of one or more persons causes damages to other people, if the specific infringing person can be determined, the infringing person shall assume liability; if anyone can prove there is no causation between his acts and damage, he shall not assume compensation liability</p>	<p>With respect to the conditions of liability exemption, amended article has adopted the general rule of modern legislation; while the judicial interpretations have made such provisions</p>
	<p>Article 11A If certain gang members commit a tort and cause damage, the whole members of gang shall bear the joint and several liability; but if any member of gang can prove there is no relation between tort and activities of gang, then the other members of gang shall not</p>	<p>It is beneficial for restricting the torts of gang. The legislative experiences of the <i>Dutch Civil Code</i> can be borrowed</p>

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
	bear the joint and several liability	
Article 12 If two or more persons commit a tort respectively but cause the same damage, and if each one's tort is sufficient to cause the entire damage, all the persons who commit the act shall bear the joint and several liability	Article 12 If two or more persons commit a tort respectively but cause the same damage, and if each one's tort is sufficient to cause the entire damage, all the persons who commit the act shall bear the joint and several liability	No modification
Article 13 If two or more persons commit a tort respectively but cause the same damage, and the degree of responsibility of each person can be determined, they shall assume the liability correspondingly; if the degree of responsibility of each person is difficult to determine, they shall equally assume the liability for compensation	Article 13 If two or more persons commit a tort respectively but cause the same damage, and the degree of cause force can be determined, they shall assume the liability correspondingly; if the degree of cause force is difficult to determine, they shall equally assume the liability for compensation	Confirming liability shall be done in the next phase, and the issue shall be solved herein is what kind of standards can be used to determine the allocation of liability. Cause force is a decisive element
Article 14 If the damage is caused by a third party, the third party shall assume the tort liability. If any legal provision specifies that the relevant entity or individual shall assume additional or corresponding liability, such provision shall govern	Article 14 If the damage is caused by a third party, the third party shall assume the tort liability. If any legal provision specifies that the relevant party shall assume additional or corresponding liability, such provision shall govern	"The relevant entity or individual" shall be substituted by "the relevant party"
Article 15 If any legal provision specifies that the joint and several liability shall be assumed, the infringer shall have the right to request a portion or all of the persons who are jointly and severally liable to assume the liability	Article 15 Where any legal provision specifies that the joint and several liability shall be assumed, the infringer shall have the right to request a portion or all of the persons who are jointly and severally liable to assume the liability	No modification
Article 16 The respective compensation amounts of the persons to take the joint and several liability shall be	Article 16 The respective compensation amounts of the persons to take the joint and several liability shall be	No modification

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
determined based on their respective degree of responsibility; if it is difficult to determine the foregoing, they shall equally assume the compensation liability If anyone jointly and severally liable pays an amount exceeding his share, he shall have the recourse against other people jointly and severally liable	determined based on their respective degree of responsibility; if it is difficult to determine the foregoing, they shall equally assume the compensation liability If anyone jointly and severally liable pays an amount exceeding his share, he shall have the recourse against other people jointly and severally liable	
	Chapter II Methods of Assuming Tort Liability	Adjust the structure of the chapter
	Section One: Methods of Assuming Tort Liability and Relation between Tort Liability and Other Legal Liabilities	Add a section name here
Article 17 The main methods of assuming tort liability are as follows: (1) stopping the infringement; (2) removing the obstacle; (3) eliminating the danger; (4) returning the property; (5) restoring to original condition or state; (6) compensating for damage; (7) eradicating effects and restoring reputation; and (8) making an apology The above methods of assuming tort liability may be applied individually or in combination	Article 17 The main methods of assuming tort liability are as follows: (1) stopping the infringement; (2) removing the obstacle; (3) eliminating the danger; (4) returning the property; (5) restoring to original condition or state; (6) compensating for damage; (7) eradicating effects and restoring reputation; and (8) making an apology The above methods of assuming tort liability may be applied individually or in combination	No modification. Reserve the same provision with the General Principles of Civil Law
	Article 17A Where the infringer shall assume administrative liability or criminal liability for the same act, assumption of the aforesaid liability shall not affect the assumption of the tort liability (if any)	Move the first paragraph of article 5 of the Second Draft for Examination and Approval to here, and reserve the original structure of the General Principles of Civil Law

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
	Article 17B Where the infringer shall assume the tort liability as well as the administrative liability or criminal liability for the same act, and the infringer’s property is not sufficient for the payment, the tort liability shall be prioritized	Move the second paragraph of article 5 of the Second Draft for Examination and Approval to here, and reserve the original structure of the General Principles of Civil Law. The liability in this article refers to compensation liability
	Article 17C If any other laws set forth special provisions on the tort liability, those provisions shall be followed	Move article 6 of the Second Draft for Examination and Approval to here, and reserve the original structure of the General Principles of Civil Law
	Section Two: Methods of Assuming Compensation Liability	Add a section name here
Article 18 Any person who harms other people and causes personal injury shall be subject to compensation for medical expenses, nursing expenses, traveling expenses and other reasonable expenses paid for the purpose of treatment and recovery, as well as income reduced due to the loss of labor hours. In case of causing disability, payment shall be made for disability appliance expenses and disability compensation. In case of causing death, payment shall be made for funeral expenses and death compensation	Article 18 Any person who harms other people and causes personal injury shall be subject to compensation for medical expenses, nursing expenses, traveling expenses and other reasonable expenses paid for the purpose of treatment and recovery, as well as income reduced due to the loss of labor hours. In case of causing disability, payment shall be made for disability appliance expenses and disability compensation. In case of causing death, payment shall be made for funeral expenses and death compensation If the infringe dies or becomes physical disability, any person supported by him shall has the right to request the infringer to assume tort liability If the infringe dies, the person who pays for the infringe’s medical	Article 18 of the Second Draft for Examination and Approval becomes the first paragraph and article 4 paragraph 1 and 2 of the Second Draft for Examination and Approval become the second and third paragraph in order to comprehensively stipulate the right to request compensation

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
	expenses, funeral expenses and other reasonable expenses shall have the right to request the infringer to compensate for the foregoing expenses, except for the expenses already paid by the infringer	
Article 19 In the case of infringing on other people's property, calculation of property loss shall be based on the market price at the time of occurrence of such loss or other methods	Article 19 In the case of infringing on other people's property, calculation of property loss shall be based on the market price at the time of occurrence of such loss or other methods If there is no market price on property loss, a reasonable compensation according to actual situation shall be made	Add paragraph 2. Certain property has no market price, and we can study from the relevant provisions in the Holland Civil Code
Article 20 If the tort jeopardizes other people's personal or property safety, the infringer may request the infringer to assume the liabilities such as stopping the infringement, removing the obstacle, eliminating the danger, etc.	Move to the next section	In order to comprehensively stipulate the application of other methods of assuming tort liability in the next section
Article 21 If a person suffers damages from preventing or stopping the encroachment on other people's civil rights and interests, the infringer shall assume the liability. If the infringer flees or is unable to assume the liability, the beneficiary shall give appropriate compensation	Article 21 If a person suffers damages from preventing or stopping the encroachment on other people's civil rights and interests, the infringer shall assume the liability. If the infringer flees or is unable to assume the liability, the beneficiary shall give appropriate compensation	No modification
	Article 21A If infringer gets benefits from unlawful behaviors conducted by infringer, the compensation for infringer shall deduct the benefits achieved by infringer	Gains offset the losses is a basic principle of compensation, and this needs to add to the tort Liability Law

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
Article 22 If both the victim and the person who commits the act are free of any fault with respect to the occurrence of damages, the two parties may share the compensation liability in light of the actual situation	Article 22 If both the victim and the person who commits the act are free of any fault with respect to the occurrence of damages, the two parties may share the damage consequence in light of the actual situation	This is an issue concerning sharing damage consequence rather than sharing liability if both the victim and the person who commits the act are free of any fault. Therefore, “compensation liability” shall be substituted by “damage consequence”
Article 23 If the infringement on right to life and right to health causes death, the close family members of infringe shall have the right to request the mental compensation; in case of causing disability, infringe shall have right to request mental compensation	Article 23 If the infringement on right to life causes death, the close family members of infringe shall have the right to request the mental compensation. If the infringement on right to health causes disability, infringe shall have right to request mental compensation	The infringement on right to health will not cause death. Therefore, the provisions on right to life and right to health need to be stipulated respectively
Article 24 If the intentional infringement on any personality right or right of status results in serious mental injury, the infringe shall have the right to demand compensation for mental distress	Article 24 If the intentional or negligent infringement on legal rights and interests of personality or personal status relationship such as guardianship results in serious mental injury, the infringe shall have the right to demand mental compensation	The right to request mental compensation shall not be limited to the intentional infringer or serious damage; mental damage caused by culpable negligence shall also bear the compensation liability for mental damage; mental damage at the general degree shall be compensated, and the amount of compensation needs to be reduced The General Principles of Civil Law has not stipulated the right of status, and certain scholars have a negative attitude on right of status Appropriately enlarge the scope of mental compensation will bring into correspondence with the current judicial interpretations, therefore “the legal rights and interests of personality” rather than

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
		“right to personality” has been used
	<p>Article 24A After the death of natural person, his close family members have right to request the compensation for mental damage under any of the following circumstances:</p> <p>(1) infringement upon the name, portrait, reputation or honor of a deceased person by insulting, libeling, disparaging, vilifying or by other means contrary to the societal public interests or societal morality;</p> <p>(2) illegal disclosure or use of the privacy of a deceased person or infringement upon the privacy by other means contrary to the societal public interests or societal morality; and</p> <p>(3) illegal use of or damage to the remains of a deceased person or infringement upon the remains by other means contrary to the societal public interests or societal morality</p>	The personality interests of the deceased shall also be protected, and the relevant provisions in the judicial interpretation can be borrowed
Article 25 After the occurrence of any damage, the parties concerned may negotiate the method of paying compensation. If the negotiation fails, the compensation shall be paid in a lump sum. If it is difficult to do so, such compensation may be paid by installments, subject to the provision of corresponding security	Article 25 The compensation for the loss caused already shall be paid in a lump sum. The obligation of compensation emerges at the time of occurring damage. If the compensation for future damage has also been paid in a lump sum, a reasonable legal fruits shall be deducted	It is not necessary to stipulate “installment” and “negotiation” and the general provisions of the law of obligations shall be applied

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
	<p>Article 25A The compensation for medical expense, nursing expense, rehabilitation expense, expense for self-help tools and living expense of infringe in the future can be paid by the way of regular payments</p> <p>If the interested parties reach an agreement on adapting regular payments, the people's court needs to confirm after reviewing whether the agreement breaks the law</p> <p>Certain guarantee shall be provided for the application of regular payments</p>	The legal meaning of regular payments is different with installment; and the provisions in judicial interpretation can be borrowed
	Section Three: Other Methods of Assuming Tort Liability	
	<p>Article 25B If the harmful behavior is continuing, the infringe has right to request stopping the infringement</p> <p>The injunction of stopping infringement can be issued after accepting the case, in the process of trial, or in the judgement According to the actual situation</p>	The embodiment of article 8A and article 17, and complete requirement of tort liability mode system
	<p>Article 25C If the harmful behavior jeopardizes or endangers others' personal or property rights, although this harmful behavior has not caused actual damage, any person jeopardized or endangered has right to request removing the obstacle and eliminating the danger</p> <p>According to the actual situation, the junction of removing the obstacle or eliminating the danger can</p>	The embodiment of article 8A and article 17, and complete requirement of tort liability mode system

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
	be issued after accepting the case or in the process of trial If the infringement obstacles the exercise of infringe's rights, the infringer has right to request removing the obstacle according to the preceding paragraph	
	Article 25D If infringement processes the property of the infringer, the infringer has right to request returning the property. If infringement causes damage of property, the people's court shall issue injunction of restoring to original condition or state If the damaged property cannot recover the value before damage after restoring, the infringer shall bear the compensation liability for derogative value If the value of damaged property exceeds its original value after repairing, the infringer shall adequate compensation If the property infringed by infringer does not exist anymore, or the damaged property has no more economic rationality, the compensation shall be applied	The embodiment of article 8A and article 17, and complete requirement of tort liability mode system; connect with the relevant provisions of the Property Rights Law
	Article 25E If the rights to reputation, privacy, freedom, name, honor, portrait, or other personality right has been infringed or personality dignity has been infringed, the infringer has right to request eradicating effects, restoring reputation and making an apology The contents of eradicating effects, restoring reputation and making an apology shall	The embodiment of article 8A and article 17, and complete requirement of tort liability mode system

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
	be determined by the People's Court	
Chapter III Circumstances for Assuming No Liability and Mitigated Liability	Chapter III Circumstances for Assuming No Liability and Mitigated Liability	
Article 26 If the infringer is also at fault for the occurrence of the damage, the liability of the infringer may be mitigated	Article 26 Where the infringer is negligently attributable to the damage, the liability of the infringer may be mitigated If the damage is caused by the victim intentionally, the person who commits the act shall assume no liability	"Fault" is changed to "negligently", and "also" is changed to "is attributable to" Change article 27 of the Second Draft for Examination and Approval into paragraph 2 in this article is to stipulate the fault and negligence of infringer can be defense for mitigating or exempting from liability
	Article 26A Any person who causes damage at the time of performing his duty according to laws shall not bear tort liability, except for where there are otherwise different provisions	Connect with the Law of State Compensation
	Article 26B The right holders may take reasonable steps of self-help if their legal rights and interests are suffering damage and they will no more maintain their legal rights and interests without taking reasonable steps, including the detention of property and the restriction of personal freedom In the case of restriction of personal freedom, in addition to take reasonable and necessary steps, the person who loss personal freedom needs to inform the relevant departments in time	Self-help has been deemed as a defense in the most jurisdictions
	Article 26C If the infringer consents to the infringement or voluntarily assumes danger and relevant	This is the doctrine of consent and own risk. There are similar provisions in other jurisdictions

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
	consequences, the infringer shall not bear tort liability If harmful behavior exceeds the scope of consent, the infringer shall bear tort liability correspondingly If the content of consent breaks law or good social customs, the infringer shall bear tort liability	
Article 27 If the damage is caused by the victim intentionally, the person who commits the act shall assume no liability	Move to Article 26 (2)	In order to stipulate that the fault and negligence of infringegee shall be the defense for infringer to mitigate or exempt from liability
Article 28 If any damage is caused to other people for the reason of force majeure, no liability shall be assumed. Where there are otherwise different provisions, such provision shall govern	Article 28 If any damage is caused to other people for the reason of force majeure, no liability shall be assumed. Where there are otherwise different provisions, such provision shall govern	No modification
Article 29 Anyone who causes harm to another for exercising justifiable defense shall not be subject to tort liability. If justifiable defense exceeds the limits of necessity and undue harm is caused, the aggrieved person shall be subject to an appropriate liability	Article 29 Anyone who causes harm to another for exercising justifiable defense shall not be subject to tort liability. If justifiable defense exceeds the limits of necessity and undue harm is caused, the aggrieved person shall be subject to an appropriate liability	No modification
Article 30 If harm occurs through emergency actions taken to avoid danger, the person who gives rise to the danger shall be subject to the liability. If the danger occurs due to natural causes, the person who takes the emergency actions shall not be subject to any tort liability or shall be given compensation to an appropriate extent. If the emergency measures taken are improper or exceed the	Article 30 If harm occurs through emergency actions taken to avoid danger, the person who gives rise to the danger shall be subject to the liability. If the danger occurs due to natural causes, the person who takes the emergency actions shall not be subject to any tort liability or shall be given compensation to an appropriate extent. If the emergency measures taken are improper or exceed the	No modification

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
limits of necessity and undue harm is caused, the person who takes the emergency actions shall be subject to the liability to an appropriate extent	limits of necessity and undue harm is caused, the person who takes the emergency actions shall be subject to the liability to an appropriate extent	
Chapter IV Special Stipulations on Liable Parties	Chapter IV Special Stipulations on Liable Parties	
	Section One: Liability of Guardian and Liability for School Accident	Add a section name here
Article 31 If a person without capacity or with limited capacity for civil acts causes damages to others, his guardian shall bear tort liability. If the guardian has done his duty of guardianship, his tort liability may be mitigated If a person who has property but is without capacity or with limited capacity for civil acts causes damages to others, the expenses of compensation shall be paid from his property. If it is insufficient to cover such expenses, the insufficient portion shall be compensated for by the guardian	Article 31 If a person without capacity or with limited capacity for civil acts causes damages to others, his guardian shall bear tort liability. If the guardian has done his duty of guardianship, his tort liability may be mitigated If a person who has property but is without capacity or with limited capacity for civil acts causes damages to others, the expenses of compensation shall be paid from his property. If it is insufficient to cover such expenses, the insufficient portion shall be compensated for by the guardian	No modification
Article 32 If a person with complete capacity for civil acts commits fault for his temporary unconsciousness act or act out of control, which causes damages to others, he shall bear tort liability. If no fault is committed, the infringe shall be compensated according to the economic condition of the infringer If a person with complete capacity for civil acts causes damages to others due to his	Article 32 If a person with complete capacity for civil acts commits fault for his temporary unconsciousness act or act out of control, which causes damages to others, he shall bear tort liability according to the degree of fault. If no fault is committed, the infringe shall be compensated according to the economic condition of the infringer If a person with complete capacity for civil acts causes	Add “degree” here

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
temporary unconsciousness act or act out of control, which is caused by intoxication, anaesthetic or psychotropic drugs abuse, he shall bear tort liability	damages to others due to his temporary unconsciousness act or act out of control, which is caused by intoxication, anaesthetic or psychotropic drugs abuse, he shall bear tort liability	
	Article 32A If a person without capacity for civil acts suffers personal injury in the course of learning or living in a kindergarten, school or other educational organization, the kindergarten, school or other educational organization shall bear liability, and no liability shall be borne if it can prove that its duty of education or management is fulfilled	Move article 36 of the Second Draft for Examination and Approval to here in order to comprehensively stipulate the matters stipulated by this section
	Article 32B If a person with limited capacity for civil acts suffers personal injury during learning or living in a kindergarten, school or other educational organization, the kindergarten, school or other educational organization shall bear liability if it fails to fulfill its duty of education or management	Move article 37 of the Second Draft for Examination and Approval to here in order to comprehensively stipulate the matters stipulated by this section
	Article 32C If a person without capacity or with limited capacity for civil acts suffers personal injury during learning or living in the kindergarten, school or other educational organization, which is caused by personnel other than those from the kindergarten, school or other educational organization, the infringer shall be subject to tort liability. If the kindergarten, school or other educational organization fail	Move article 38 of the Second Draft for Examination and Approval to here in order to comprehensively stipulate the matters stipulated by this section

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
	to fulfill its management duty, they shall bear supplementary liability correspondingly	
	Section Two: Liability of Employer, Contractor and Voluntary Worker	Add a section name here
Article 33 Where working personnel of an employing party cause damages to others due to performance of their tasks, the employing party shall be subject to tort liability	Article 33 Where any person who is used by user causes damages to others due to performance of his task, the user shall bear tort liability The relation between person being used and user will be determined under following circumstances: (1) whether user has right to instruct the person being used; and (2) whether person being used is working for the interests of user	Due to the term of “employing party” has been used by the Labor Contract Law of the People’s Republic of China, there are thus no political problems to use the expression of “user” and “person being used” in the Tort Liability Law. In fact, the term of “employing party” is not accurate due to a person may also be employed by another person. In addition, “employing party” is not civil subject in civil law The criterion for judgment on “use” and “being used” shall be given by law
	Article 33A Any person being used, who accepts the instructions from two or more users or works for two or more users, causes damages to others due to performance of his task, multiple users shall joint bear the tort liability	Multiple employment relation needs to be stipulated
	Article 33B If, during a period of secondment, the seconded working personnel cause damages to others due to performance of their tasks, the party accepting secondment shall be subject to tort liability. If the seconding party commits fault, it shall bear supplementary liability correspondingly	The compensation liability under the secondment shall be stipulated in the Tort Liability Law

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
	Article 33C Where any person being used intentionally causes damage to others or causes damage to others due to culpable negligence, this person and the user shall bear the joint and several liability	There are relevant provisions in the Swiss Civil Code and judicial interpretations
	Article 33D Where any contractor causes damages to the third party or himself due to performance of their tasks, ordering party shall not bear compensation liability. The ordering party shall bear compensation liability correspondingly, if he has negligence in customizing, instructing or selecting	There are relevant provisions in judicial interpretations, and this rule has been internationally recognized
	Article 33E If any person, who voluntarily provides labor service for the others for free, causes damage to others due to performance of activities of providing labor service, the person being helped shall bear compensation liability. If the person providing labor service causes damages due to his fault or culpable negligence, he shall bear the joint and several liability with the person being helped. If the person providing labor service suffers personal injury due to the activities of providing labor service, the person being helped shall bear compensation liability. If person being helped clearly refuses the labor service, he shall not bear compensation liability, but he shall provide adequate compensation in the scope of his benefits	There are relevant provisions in judicial interpretations, and there should be such provision in practice

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
	If the person providing labor service suffers personal injury due to the third party, the third party shall bear compensation liability. If the third party cannot be determined or is unable to compensate, the person being helped shall provide adequate compensation	
	Section Three: Liability of Network Operator and Liability of Obligor of Safety Protection	Add a section name here
Article 34 Where an Internet service provider is aware that users are utilizing its network to commit a tort to other's civil rights and interests, the provider shall be subject to joint and several liability with the users if it fails to take necessary measures. Where network users utilize the network to commit a tort, the infringer shall have the right to notify the Internet service provider to take necessary measures such as deleting, blocking, disconnecting, etc. If the Internet service provider fails to take necessary measures in a timely manner after receipt of the notice, it shall be subject to joint and several liability with the users for the expanded damages	Article 34 Where an Internet service provider is aware that users are utilizing its network to commit a tort to other's civil rights and interests, the provider shall be subject to joint and several liability with the users if it fails to take necessary measures. Where network users utilize the network to commit a tort, the infringer shall have the right to notify the Internet service provider to take necessary measures such as deleting, blocking, disconnecting, etc. If the Internet service provider fails to take necessary measures in a timely manner after receipt of the notice, it shall be subject to joint and several liability with the users for the expanded damages	No modification
Article 35 If managers of a hotel, shopping mall, bank, station, recreation spot or other public amenities or organizers of mass activities fail to fulfill their duty of safety protection and cause damages to others, they shall be subject to tort liability	Article 35 If managers of a hotel, shopping mall, bank, station, recreation spot or other public amenities or organizers of mass activities fail to fulfill their duty of safety protection and cause damages to others, they shall be subject to tort liability	No modification

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
If the damages are caused by the act of a third party, the third party shall be subject to tort liability. Where the managers or organizers fail to fulfill their duty of safety protection, they shall bear supplementary liability correspondingly	If the damages are caused by the act of a third party, the third party shall be subject to tort liability. Where the managers or organizers fail to fulfill their duty of safety protection, they shall bear supplementary liability correspondingly	
Article 36 If a person without capacity for civil acts suffers personal injury in the course of learning or living in a kindergarten, school or other educational organization, the kindergarten, school or other educational organization shall bear liability, and no liability shall be borne if it can prove that its duty of education or management is fulfilled	Move to Article 32A	The requirement of systematism
Article 37 If a person with limited capacity for civil acts suffers personal injury during learning or living in a kindergarten, school or other educational organization, the kindergarten, school or other educational organization shall bear liability if it fails to fulfill its duty of education or management	Move to Article 32B	The requirement of systematism
Article 38 If a person without capacity or with limited capacity for civil acts suffers personal injury during learning or living in the kindergarten, school or other educational organization, which is caused by personnel other than those from the kindergarten, school or other educational organization, the infringer shall be subject to tort liability. If the	Move to Article 32C	The requirement of systematism

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
kindergarten, school or other educational organization fail to fulfill its management duty, they shall bear supplementary liability correspondingly		
Chapter V Product Liability	Chapter V Product Liability	
Article 39 A producer shall be subject to tort liability for damages to other persons due to defects existing in the products The producer shall not bear tort liability if he can prove: (1) the products have not been put into circulation; (2) the defeats do not exist in the products after they have been put into circulation; and (3) the defeats in the products are important to be found due to limited degree of scientific technology	Article 39 A producer shall bear compensation liability for property damages to other persons due to defects existing in the products	Article 41 of the Production Quality Law of the People's Republic of China is the same provision, and this is also the rule recognized internationally that the compensation for value of defective product shall be adjusted by the contract law (such as article 40 of the Production Quality Law stipulates that the sale contract is the premise of the compensation liability) The second paragraph moves to the next article as an independent article
	Article 39A The producer shall not bear tort liability under the following circumstances: (1) the products have not been put into circulation; (2) the defeats do not exist in the products after they have been put into circulation; and (3) the defeats in the products are important to be found due to limited degree of scientific technology	Defense, as an independent matter, shall be stipulated independently
	Article 39B Defects refer to any unreasonable danger which may endanger the personal and property security of the others, includes design defect, production defect and warning defect	There is a provision concerning defect in article 46 of the Production Quality Law. The common theory is that defect can be divided into three types, this has been accepted by China, and make a provision shall help

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
		the people's court to correctly determine the existence of defect in practice
	Article 39C Production refers to any movable property processed and produced for sell. Electric current in wire transmission and substance in pipeline transport belongs to production The provisions in this section shall not be applied to the construction work, but the construction material, components and equipment used for construction work belong to production as mentioned in preceding paragraph, and the provisions in this section shall be applied	Production liability shall be contained in the Tort Liability Law due to its independent character
	Article 39D Producer refers to any practitioner engaged in producing and processing production; any person, as the producer of a production, demonstrates his name, title, corporate name or trademark person on the production; or any natural person, legal person or other organizations who can be deemed as the actual producer of the production according to the manufacture, process, form of selling, or other matters The importer of production shall be deemed as the producer of imported production	The specific definition of producer is significant in judicial practice, and a clear judgment rule is thus necessary
Article 40 A seller shall be subject to tort liability for damages to other persons caused by defects existing in the products that result from the fault of the seller	Article 40 A seller shall be subject to tort liability for damages to other persons caused by defects existing in the products that result from the fault of the seller	No modification

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
A seller shall be subject to tort liability if it can neither identify the producer nor supplier of the defective products	A seller shall be subject to tort liability if it can neither identify the producer nor supplier of the defective products	
Article 41 If damages are caused by defects existing in the products, the infringer may claim for compensation either from the producer or from the seller of the products If defects in the products are caused by the producer, the seller have the recourse against the producer after it has paid the compensation If defects existing in the products are due to the fault of the seller, the producer shall have the recourse against from the seller after it has paid the compensation	Article 41 If damages are caused by defects existing in the products, the infringer may claim for compensation either from the producer or from the seller of the products	Article 41 of the Second Draft for Examination and Approval shall be divided into two articles due to they are two different rights to request
	Article 41A If defects in the products are caused by the producer, the seller have the recourse against the producer after it has paid the compensation If defects existing in the products are due to the fault of the seller, the producer shall have the recourse against from the seller after it has paid the compensation	The same reason with article 41
Article 42 If damages to other persons are caused by defects existing in the products that result from the fault of a third party such as the party providing transportation or warehousing, the producer and the seller of the products shall have the right to recover its respective losses from such third party	Article 42 If damages to other persons are caused by defects existing in the products that result from the fault of a third party such as the party providing transportation or warehousing, the producer and the seller of the products shall have the right to recover its respective losses from such third party	No modification

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
Article 43 If defects in the products endanger the safety of the person or property of others, the infringer shall have the right to ask the producer or the seller to bear tort liability such as elimination of danger, removal of obstacles, etc.	Article 43 If defects in the products endanger the safety of the person or property of others, the infringer shall have the right to ask the producer or the seller to bear tort liability such as elimination of danger, removal of obstacles, etc.	No modification
Article 44 If defects are found to exist in the products after they have been put into circulation, the producer or the seller shall take remedial measures such as issuance of warning, recall of products, etc. in a timely manner. The producer or the seller shall bear tort liability if it has not taken remedial measures in a timely manner or has not make efforts to take remedial measures, thus causing damages	Article 44 If defects are found to exist in the products after they have been put into circulation, the producer or the seller shall take remedial measures such as issuance of warning, recall of products, etc. in a timely manner. The producer or the seller shall bear tort liability if it has not taken remedial measures in a timely manner or has not make efforts to take remedial measures, thus causing damages	No modification
	Article 44A The validity period for claiming for compensation for damages due to defects of products is two years, starting from the date when the parties concerned is notified or should have known the matter The right of request for compensation claim for damages done due to defects of products shall lose effect after the tenth year after the products shall lose effect after the tenth year after the products with defects that cause damages was first delivered to the users or consumers. However, cases in which the specified safe use period has not been exceeded are exceptions	Article 45 of the Product Quality Law of the People's Republic of China (2000 Amendment)

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
Article 45 If the products are produced and sold even with known defects therein, causing deaths or severe damage to the health of others, the infringer shall have the right to claim respective punitive damages according to law	Article 45 If the products are produced and sold even with known defects therein, causing deaths or severe damage to the health of others, the infringer shall have the right to claim respective punitive damages according to law	No modification
Chapter VI Liability for Traffic Accidents Caused by Motor Vehicles	Chapter VI Liability for Traffic Accidents Caused by Motor Vehicles	
Article 46 If traffic accidents are caused by motor vehicles, resulting in damages, liability for compensation shall be borne according to pertinent stipulations of the road traffic safety law	Article 46 Where a motor vehicle meets with a traffic accident and causes personal injury or death or any property loss, the insurance company shall pay indemnity within the limit of the compulsory third party liability insurance liability for the motor vehicle. The part in excess of the liability limit shall be indemnified according to the following provisions: (1) Where a traffic accident occurs between motor vehicles, the faulty party shall bear the liabilities; if both parties are in fault, they shall each bear their proper share of the liabilities; and (2) Where a traffic accident occurs between a motor vehicle and a non-motor vehicle driver or a pedestrian, if the non-motor vehicle driver or pedestrian is not in fault, the motor vehicle driver shall bear the liabilities; however, if there is any evidence to prove that the non-motor vehicle driver or the pedestrian is in fault, the	Article 46 of the Second Draft for Examination and Approval shall be substituted by article 76 of the Road Traffic Safety Law of the People's Republic of China (2007 Amendment) after adjusting

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
	<p>motor vehicle driver's liabilities may be properly mitigated in light of the degree of fault; and if the motor vehicle is not in fault at all, the motor vehicle driver shall bear no more than 10 percent of compensation liabilities</p> <p>Where the losses of the traffic accident are caused by the deliberate collision of the motor vehicle by a non-motor vehicle driver or a pedestrian, the motor vehicle driver shall bear no liabilities</p>	
<p>Article 47 If the provision of buying the compulsory insurance has not been followed. The owner of motor vehicle shall bear compensation liability to the extent of the limitation of liability of compulsory motor vehicle insurance</p>	<p>Article 47 If the provision of buying the compulsory insurance has not been followed. The owner of motor vehicle shall bear compensation liability to the extent of the limitation of liability of compulsory motor vehicle insurance</p>	No modification
<p>Article 48 If the owner and the user of a motor vehicle are not the same person due to rental or leasing thereof, and the liability for causing a traffic accident lies on the side of the motor vehicle, the insurance company shall make compensation to the extent of the limitation of liability of compulsory motor vehicle insurance. If the insurance is not sufficient to cover such compensation, the user of the motor vehicle shall be liable for the insufficient portion. If occurrence of damages is also due to the fault of its owner, he shall be liable for</p>	<p>Article 48 If the owner and the user of a motor vehicle are not the same person due to rental or leasing thereof, and the liability for causing a traffic accident lies on the side of the motor vehicle, the insurance company shall make compensation to the extent of the limitation of liability of compulsory motor vehicle insurance. If the insurance is not sufficient to cover such compensation, the user of the motor vehicle shall be liable for the insufficient portion. If occurrence of damages is also due to the fault of its owner, he shall be liable for</p>	No modification

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
compensation correspondingly	compensation correspondingly	
Article 49 In circumstances where a motor vehicle is transferred and delivered between the parties concerned by way of sale and purchase, etc. but the procedures for registration of the transfer of its ownership have not yet been handled, and if the liability for causing a traffic accident lies on the side of such motor vehicle, the insurance company shall make compensation to the extent of the limitation of liability of compulsory motor vehicle insurance. If the insurance is not sufficient to cover such compensation, its transferee shall be liable for the insufficient portion	Article 49 In circumstances where a motor vehicle is transferred and delivered between the parties concerned by way of sale and purchase, etc. but the procedures for registration of the transfer of its ownership have not yet been handled, and if the liability for causing a traffic accident lies on the side of such motor vehicle, the insurance company shall make compensation to the extent of the limitation of liability of compulsory motor vehicle insurance. If the insurance is not sufficient to cover such compensation, its transferee shall be liable for the insufficient portion	No modification
	Article 49A If the motor vehicle causes traffic accident and damages the others at the time of operating an affiliated business, the operator of affiliating shall bear the compensation liability. If the operator of affiliating business is unable to bear the compensation liability, the owner of affiliated business shall bear the additional liability	The traffic accident caused by operating an affiliated business often occurs, there thus should be a provision. Article 48 mentioned in preceding paragraph cannot be applied to the traffic accident caused by operating an affiliated business due to the owner of affiliated business may charge fee and make security management and education
Article 50 If a motor vehicle that is reassembled or reaches the standards for being discarded as unserviceable is transferred by way of sale and purchase, etc. and a traffic accident is caused by it, resulting in damages, its transferor and	Article 50 If a motor vehicle that is reassembled or reaches the standards for being discarded as unserviceable is transferred by way of sale and purchase, etc. and a traffic accident is caused by it, resulting in damages, its transferor and	No modification

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
the transferee shall be jointly and severally liable therefore	the transferee shall be jointly and severally liable therefore	
Article 51 If a traffic accident is caused by a motor vehicle that has been stolen, looted or snatched, resulting in damages, the person who commits the act of stealing, looting or snatching shall be liable for compensation. If the insurance company has paid rescue expenses to the extent of the limitation of liability of compulsory motor vehicle insurance, it shall have the recourse against the person responsible for the traffic accident	Article 51 If a traffic accident is caused by a motor vehicle that has been stolen, looted or snatched, resulting in damages, the person who commits the act of stealing, looting or snatching shall be liable for compensation. If the insurance company has paid rescue expenses to the extent of the limitation of liability of compulsory motor vehicle insurance, it shall have the recourse against the person responsible for the traffic accident	No modification
Article 52 If the driver of a motor vehicle flees away from the scene after the occurrence of a traffic accident and the compulsory insurance has been bought for the motor vehicle, the insurance company shall make compensation to the extent of the limitation of liability of compulsory motor vehicle insurance. After such social assistance fund has paid the expenses, the institution managing such fund shall have the recourse against the party responsible for the traffic accident	Article 52 If the driver of a motor vehicle flees away from the scene after the occurrence of a traffic accident and the compulsory insurance has been bought for the motor vehicle, the insurance company shall make compensation to the extent of the limitation of liability of compulsory motor vehicle insurance. After such social assistance fund has paid the expenses, the institution managing such fund shall have the recourse against the party responsible for the traffic accident	No modification
	Article 52A Where if the traffic accident caused by the fault of pedestrian or party of non-motor vehicle damages the party of motor vehicle or the other, the pedestrian or the party of non-motor vehicle shall bear compensation liability	Although these cases shall be handled according to the principle of fault liability, these cases belong to traffic accidents, and the public may believe that the pedestrian or the party of non-motor vehicle shall not bear compensation if we do not make a provision in the

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
	according to article 7 (1) of this law	Tort Liability Law. In addition, this kind of provision has value in lawmaking policy, which reflects the spirit of equal protection for both parties in traffic accident
Chapter VII Liability for Damages Caused by Medical Treatment	Chapter VII Professional Liability	Enlarge the scope of application
	Section One: General Provisions	Add a section name here. Medical damage liability belongs to professional liability. Although the professional liability in China has been stipulated been by specific laws include the Lawyer Law, the Law on Certified Public Accountants, etc., an unified provision concerning professional liability in the Tort Liability Law is necessary
	Article 52B A professional refers to the person who has intellectual skill, whereby service is offered to the public, usually though not inevitable for reward and requiring professional standards of competence, training and ethics, typically reinforced by some form of official accreditation accompanied by evidence of qualification Professional activities refer to the activities that professional offers his intellectual skill to the public. At the time of offering intellectual skill, any professional shall accord with relevant laws, regulations, industry standards and operating instructions	Define professional liability

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
	<p>Article 52C Any professional shall bear tort liability if he intentionally or negligently causes damage to his client at the time of providing professional service</p> <p>If two or more professionals sign legal documents, provide professional opinions or make professional decision jointly, and cause damage to the others, then they shall bear the joint and several liability</p> <p>If any professional, who is employed by a special practicing institution, engages in practicing activities in the name of this special practicing institution, then this special practicing institution shall bear tort liability if the professional causes damage to the others at the time of practicing.</p> <p>After making the compensation, the special practicing institution shall have recourse against the professional</p>	Define professional liability
	<p>Article 52D At the time of engaging in practicing, any professional shall maintain the legal rights and interests of his clients by exercising a high degree of duty of care, duty of loyalty and duty of maintaining confidentiality</p> <p>The violation of duties as mentioned in the preceding paragraph shall be presumed as being at fault</p>	Define the duty of care of professional
	<p>Article 52E The infringer shall provide prima facie evidence to prove the professional or practicing institution is at fault and</p>	Define causation and prima facie evidence

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
	<p>there is causation between the fault of professional or practicing institution and the damage of infringe</p> <p>If prima facie evidence is able to prove the fault and causation, the fault and causation shall be presumed to be existed unless the professional and his practicing institution are able to prove there are no fault and causation</p> <p>The profession and his practicing institution shall provide all records and materials concerning the case, and the fault and causation shall be presumed to be existed if they forge, falsify or destroy the relevant records and materials</p>	
	Section Two: Liability for Medical Damage	Add a section name here
Article 53 If a patient is injured during the activities of diagnosis and medical treatment and such injury is caused by the fault of medical staff members, the medical staff members shall be liable for compensation	<p>Article 53 If a patient is injured in the process of accepting diagnosis and medical treatment and such injury is caused by the fault of medical staff members, the medical staff members shall be liable for compensation</p> <p>If medical staff members are employed by medical institutions, the medical institutions shall bear compensation liability</p>	Add “accepting”, and change “activities” to “process”
Article 54 If a patient is injured during diagnosis and medical treatment and such injury is caused by the fault of medical staff members, the medical institution shall be liable for compensation	Deletion	Article 54 of the Second Draft for Examination and Approval repeats with article 52C (3) of this law

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
<p>Article 55 The medical staff shall explain to the patient the situation regarding his illness and the measures for medical treatment they will take during diagnosis and medical treatment. If surgery, special examination or special treatment is required, they shall explain to the patient in a timely manner the situation regarding his illness, measures for medical treatment and risk for such treatment, alternative plan for treatment, etc., written consent must be obtained from him. If it is not advisable to explain to the patient, the explanation of the same shall be served to his close family members which written consent shall be obtained</p> <p>If medical staff members fail to perform their obligations as mentioned in the preceding paragraph, causing injuries to the patient, the medical institution concerned shall be liable for compensation</p>	<p>Article 55 The medical staff shall explain to the patient the situation regarding his illness and the measures for medical treatment they will take during diagnosis and medical treatment. If surgery, special examination or special treatment is required, they shall explain to the patient in a timely manner the situation regarding his illness, measures for medical treatment and risk for such treatment, alternative plan for treatment, etc., written consent must be obtained from him. If it is not advisable to explain to the patient, the explanation of the same shall be served to his close family members which written consent shall be obtained</p> <p>If medical staff members fail to perform their obligations as mentioned in the preceding paragraph, causing injuries to the patient, the medical institution concerned shall be liable for compensation</p>	No modification
<p>Article 56 If the opinion of a patient or his close family members cannot be obtained due to emergency situations such as rescuing the life of the patient who is in critical condition, corresponding measures for medical treatment may be performed with the approval of the person in charge or the authorized responsible person of the medical institution</p>	<p>Article 56 If the opinion of a patient or his close family members cannot be obtained due to emergency situations such as rescuing the life of the patient who is in critical condition, corresponding measures for medical treatment may be performed with the approval of the person in charge or the authorized responsible person of the medical institution</p>	No modification

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
Article 57 During diagnosis and medical treatment, medical staff members fail to exercise the duty of care corresponding to the current medical treatment level, and cause injuries to the patient, the medical institution concerned shall be liable for compensation	Article 57 During diagnosis and medical treatment, medical staff members fail to exercise the duty of care corresponding to the current medical treatment level, and cause injuries to the patient, the medical institution concerned shall be liable for compensation	No modification
Article 58 A medical institution shall be presumed to be at fault if injuries are caused to a patient under any of the following circumstances: (1) it violates pertinent stipulations of laws, administrative regulations, rules and other specifications regarding diagnosis and medical treatment; (2) it hides or refuses to provide medical records in connection with a dispute; and (3) it forges, falsify or destroys medical records	Article 58 A medical institution will be affirmed to be at fault if injuries are caused to a patient under any of the following circumstances: (1) it violates pertinent stipulations of laws, administrative regulations, rules and other specifications regarding diagnosis and medical treatment; (2) it hides or refuses to provide medical records in connection with a dispute; and (3) it forges, falsify or destroys medical records	Change “presumed” to “affirmed”
Article 59 Where the damage of patient may be caused by the diagnosis and medical treatment of medical staff, a causation between the damage of patient and the diagnosis and medical treatment of medical staff shall be presumed unless the medical staff is able to provide an evidence on the contrary	Article 59 Where the damage of patient may be caused by the diagnosis and medical treatment of medical staff, a causation between the damage of patient and the diagnosis and medical treatment of medical staff shall be presumed unless the medical staff is able to provide an evidence on the contrary	No modification
Article 60 The patient shall inform the situation regarding his illness to the medical staff, and cooperate with the medical institution in performing diagnosis and medical treatment that conforms to therapeutic standards. If the patient has	Article 60 The patient shall inform the situation regarding his illness to the medical staff, and cooperate with the medical institution in performing diagnosis and medical treatment that conforms to therapeutic standards. If the patient has	No modification

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
not performed his duty of informing and suffers damage due to misdiagnose. The medical institution shall not be liable for compensation	not performed his duty of informing and suffers damage due to misdiagnose. The medical institution shall not be liable for compensation	
Article 61 If a patient gets injured due to defects in medicines and drugs, disinfectants or medical equipment. The patient may claim for compensation from their respective producers or from the medical institution concerned. If the patient claims compensation from the medical institution, the medical institution may have the recourse against such liable producers or the third party	Article 61 If a patient gets injured due to defects in medicines and drugs, disinfectants or medical equipment. The patient may claim for compensation from their respective producers or from the medical institution concerned. If the patient claims compensation from the medical institution, the medical institution may have the recourse against such liable producers or the third party	No modification
Article 62 If a patient gets injured due to the transfusion of blood that is not up to the standard, the patient may claim for compensation from institutions providing the blood or from the medical institution concerned. If the patient claims compensation from the medical institution, the medical institution may have the recourse against institutions providing the blood	Article 62 If a patient gets injured due to the transfusion of blood that is not up to the standard, the patient may claim for compensation from institutions providing the blood or from the medical institution concerned. If the patient claims compensation from the medical institution, the medical institution may have the recourse against institutions providing the blood	No modification
Article 63 The medical institution and its medical staff shall complete and safe keep medical records such as records of admission, doctors' instruction sheets, examination reports, records operation and anesthesia, records for patients' medical history, nursing notes, and documents and related information regarding	Deletion	Article 63 of the Second Draft for Examination and Approval repeats with article 52E (3) of this law

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
medical fees and expenses, etc.		
Article 64 A medical institution and its medical staff shall protect the patient's privacy and keep his data in confidence. If the medical institution leaks the patient's privacy or discloses medical documents or information relating to the patient's illness without the patient's consent, causing damages to the patient, it shall be subject to tort liability	Deletion	Article 64 of the Second Draft for Examination and Approval repeats with article 52D of this law
Article 65 Medical institutions and its medical staff members shall not violate medical norms and undergo unnecessary examination, diagnosis and medical treatment If medical staff members fail to perform the duty as mentioned in the preceding paragraph, the medical institution shall return unnecessary medical fee, and bear compensation liability for causing injuries to the patient	Deletion	Article 65 of the Second Draft for Examination and Approval does not belong to the provisions of tort liability, and the author suggests that this article shall be stipulated in other laws
Article 66 Lawful interests and rights of medical institutions and its medical staff members shall be protected by law. Those who interfere the order of medical treatment and obstruct the work and life of the medical staff members shall be legally liable therefore according to law	Deletion	Article 66 of the Second Draft for Examination and Approval does not belong to the provisions of tort liability, and the author suggests that this article shall be stipulated in other laws
Chapter VIII Liability for Environmental Pollution	Chapter VIII Liability for Polluting Environment and Destructing Ecology	Any person destructs ecology shall bear tort liability

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
Article 67 With respect to any damage caused by environment pollution, the polluter shall bear tort liability	Article 67 With respect to any damage caused by polluting environment, the polluter shall bear tort liability	This is an issue of grammar. "Environment pollution" shall be substituted by "polluting environment"
Article 68 If pollution discharge causes other persons' damage, the polluter shall bear corresponding compensation liability no matter if the pollution discharge accord with discharge standard or not	Article 68 If pollution discharge causes other persons' damage, the polluter shall bear corresponding compensation liability no matter if the pollution discharge accord with discharge standard or not	No modification
Article 69 In the event of any dispute arising from environmental pollution, the polluter shall bear the burden of proof with regard to the legal basis for bearing no liability or mitigation of its liability and the non-existence of causation between its act and damage	Article 69 In the event of any dispute arising from environmental pollution, the causation between the act of discharging pollution and damage shall be presumed; and polluter shall not bear compensation liability if he can prove the non-existence of causation between its act and damage	It is not necessary to stipulate the legal basis for bearing no liability or mitigation of its liability, while the correct expression of causation is necessary
Article 70 Two or more than two polluters that have caused environmental pollution, the polluters shall bear their respective liabilities as determined according to such factors as the categories and discharge of pollutants	Article 70 Two or more than two polluters that have caused environmental pollution, the polluters shall bear their respective liabilities as determined according to such factors as the categories and discharge of pollutants	No modification
Article 71 With respect to any damage arising from environmental pollution caused due to the fault of a third person, the infringer may claim compensation either from the polluter, or from the third person. After the polluter makes the compensation, the polluter shall have recourse against the third person	Article 71 With respect to any damage arising from environmental pollution caused due to the fault of a third person, the infringer may claim compensation either from the polluter, or from the third person. After the polluter makes the compensation, the polluter shall have recourse against the third person	No modification

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
	Article 71A Any person who destructs ecology and causes damage of other persons shall bear tort liability according to the provisions in this section	The people's court has adopted an understanding on "polluting environment" in a narrow sense, and this will cause the infringer cannot receive remedy according to the current provisions. The Tort Liability Law shall solve this problem It is similar to the damage caused by polluting environment, damage caused by destructing ecology shall adopt the non-fault liability. Such provision will be benefit to not only remedying infringer but also protecting ecology and promoting harmony between human being and the nature
Chapter IX Liability for High Hazard Work	Chapter IX Risk Liability	Enlarge the scope of adjustment
Article 72 Anyone who engages in work that involves a high degree of danger and causes damage to others shall bear tort liability	Article 72 Anyone who engages in work that involves a high degree of danger, such as high altitude, high pressure and high speed means of transportation, and causes damage to others shall bear tort liability	Certain contents in article 72 of the Second Draft for Examination and Approval repeats with article 74 of the Second Draft for Examination and Approval. Any work that involves a high degree of danger shall not limit in high altitude and high pressure, certain space for extension by judicial interpretation shall be reserved
	Article 72A If any damage is caused to others due to failure to place obvious signs and take safety measures when digging holes or repairing or installing underground facilities in a public place, on a roadside or in a passageway, the constructor shall bear tort liability	Move the first paragraph of article 87 of the Second Draft for Examination and Approval to here as article 72A; the liability of constructor is the liability for damage caused by physical items rather than risk liability brought by behaviors of constructor; and this kind of liability shall not be incorporated into risk

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
		liability, and fault presumption shall be applied
Article 73 If any nuclear material, nuclear facilities or civil aircraft causes damage to others, the operator of such nuclear material, nuclear facilities and civil aircraft shall bear tort liability, and no liability shall be assumed by the operator if it can prove that the damage has been caused by the victim intentionally	Article 73 If any nuclear material, nuclear facilities or civil aircraft causes damage to others, the owner and manager of nuclear material or operator of nuclear facilities and civil aircraft shall bear tort liability, and no liability shall be assumed by the operator if it can prove that the damage has been caused by the victim intentionally	In case of damage caused by any nuclear material, the owner and manager of nuclear material rather than operator of nuclear material shall bear tort liability. The reason is the unclear material is not in the state of operation
Article 74 If any possession or use of high hazard substances including inflammable, explosive, supertoxic or radioactive substances, or any engagement in the high degree of danger, such as high altitude, high pressure and high speed means of transportation, causes damage to others, the corresponding units and individuals shall bear tort liability, and no liability shall be assumed if it can prove that the damage has been caused by the victim intentionally	Article 74 If any possession or use of high hazard physical items including inflammable, explosive, supertoxic or radioactive substances causes damage to others, the possessor or user shall bear tort liability, and no liability shall be assumed by the possessor or user if it can prove that the damage has been caused by the victim intentionally or by a force majeure event	“Substances” shall be changed to “items”. The expression of “the corresponding units and individuals” is not scientific, and the expression here shall be corresponding to the reason of assuming liability for “possession” and “use”. Therefore, “the corresponding units and individuals” shall be substituted by “possessor” and “user”
Article 75 If any damage is caused by losing or abandoning high hazard substances, the owner and manager thereof shall bear tort liability	Article 75 If any damage is caused due to any loss or abandonment of high hazard substances, the person who loses and abandons high hazard substances shall bear tort liability	The reason of assuming tort liability shall be corresponding to the person liable, so it is not necessary to consider the owner and manager here
Article 76 If any damage is caused due to the unlawful possession of any high hazard substance, the unlawful possessor shall bear the tort liability. If the	Article 76 If any damage is caused due to the unlawful possession of any high hazard items, the unlawful possessor shall bear the tort liability. If the owner of such	The expression of “Items” is better than the expression of “substance”

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
owner or manager is unable to prove that it has exercised a high degree of care, it shall be jointly and severally liable with the unlawful possessor	high hazard items is unable to prove that it has exercised a high degree of care, it shall be jointly and severally liable with the unlawful possessor	
Article 77 If any damage is caused due to unauthorized entry into any area that involves high hazard activities or where high hazard substances are stored, and if the operator of high hazard activities has taken safety measures and performed the obligation for warning, the operator of high hazard activities may bear no liability or the liability may be mitigated	Article 77 If the operator or constructor of high hazard activities and the owner or manager of high hazard items has taken safety measures and performed the obligation for warning, their compensation liability for any damage caused by unauthorized entry into any area that involves high hazard activities or where high hazard substances are stored shall be mitigated	The requirement of grammar and the “constructor” contained in article 72A shall be included
Chapter X Liability for Harm Caused by Animals	Chapter X Liability for Harm Caused by Raising Animals	The remedy for damage caused by wild animals in a complete sense does not belong to the adjustment scope of the Tort Liability Law
Article 78 If a domestic animal causes damage to others, the raiser of the animal shall bear tort liability, and the raiser of animals shall bear no liability or the liability can be mitigated if the raiser of the animal is able to prove that the damage is caused by the willful intention or gross negligence of the infringer	Article 78 If a domestic animal causes damage to others, the owner or keeper of the animal shall bear tort liability. The liability of the owner or keeper of animals shall be exempted or mitigated if it can be proved that the damage is caused by the gross negligence of the infringer, and the owner or keeper of animals shall not bear tort liability if it can be proved that the damage is caused by the willful intention of the infringer	The subject of liability shall be “owner” or “keeper” rather than “raiser”; if the owner or keeper of animals can be exempted or mitigated due to the gross negligence of the infringer, then the owner or keeper of animals certain shall not bear tort liability due to the willful intention of the infringer
Article 79 If any damage is caused by any dangerous animal such as banned	Deletion	This article does not contain any legal provision, and the preceding article has already

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
highly dangerous dogs, the owner or keeper of such animal shall bear tort liability		contained this article; with respect to the tort liability for damage caused by raising animals, the non-fault liability shall be applied, and whether certain provisions have been infringed is noting related to the construction of liability and the mitigation of liability
Article 80 If any damage is caused by any animal in a zoo, the zoo shall bear tort liability, and no liability shall be borne if it can prove that it has performed its management duties	Deletion	Damage caused by animals raised by a zoo is the same with the damage caused by animals raised by a family, and the non-fault liability shall be applied; and the provisions in the General Principles of Civil Law is correct, and there is no reason to change these provisions
	Article 80A If the damage and loss caused by fighting between scattered animals, and both owners and managers of scattered animals are free of any fault with respect to the occurrence of damages, then both parties shall equally share the harmful consequence If one party or both parties are attributable to the damage, then they shall share the harmful consequence correspondingly If there is local custom, such custom shall be followed	Damage or loss caused by fighting between scattered animals often occurs, therefore this circumstance shall be stipulated in the Tort Liability Law; the principle of equally sharing the harmful consequence shall be applied rather the principle of non-fault liability; the principle of fault liability shall be applied if one party or both parties are attributable to the damage; if there is local custom of handling with such issue, such custom shall be followed
	Article 80B Where damage caused by wild animals protected by the state, the infringer shall request the department in charge at the county level for compensation	Any person shall be remedied under this situation, and the supporting provisions shall be established in the future

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
Article 81 If any damage is caused to others by any animal due to the fault of a third person, the infringer may claim compensation either from the raiser of the animal, or from the third person. After assuming the tort liability, the raiser shall have the recourse against the third person	Article 81 If any damage is caused to others by any raising animal due to the fault of a third person, the infringer may claim compensation either from the owner or keeper of the animal, or from the third person. After the owner or keeper of the animal bears the liability, the owner or keeper shall have the recourse against the third person	Add the term of “raising” in order to make the expression become more accurate
Chapter XI Liability for Damage Caused by Objects	Chapter XI Liability for Damage Caused by Physical Items	Certain provisions concerning unmeasurable substances shall be added
Article 82 If any damage is caused to others due to the collapse, fall or drop of any building, structures or any other facilities or any objects placed or displayed on them, the owner, the manager or the user shall bear tort liability if it cannot prove that it is not at fault After the owner, the manager or the user makes compensation, it shall have recourse against other liable persons, if any	Article 82 If any damage is caused to others due to the collapse, fall or drop of any building, structures or any other facilities or any objects placed or displayed on them, the owner, the manager or the user shall bear tort liability if it cannot prove that it is not at fault After the owner, the manager or the user makes compensation, it shall have recourse against other liable persons, if any	No modification
Article 83 If any damage is caused to others due to the throwing of any object out of a building or the fall of any object down from a building, but the specific infringing person is difficult to be determined, the users of the building that are likely to have caused the injury shall make compensation unless any user can prove that he is not the infringing person	Deletion	This kind of presumption lacks the legal basis; this presumption is not supported by foreign legislations and practices; this presumption makes the Tort Liability Law losing its basis of fairness and justice; and this presumption will infringe the freedom of the whole social members

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
Article 84 If any damage is caused to others due to the collapse of any piled-up objects, the person who has piled up the objects shall bear tort liability if he cannot prove that he is not at fault	Article 84 If any damage is caused to others due to the collapse of any piled-up objects, the person who has piled up the objects shall bear tort liability if he cannot prove that he is not at fault	
Article 85 If any damage is caused to others due to the pile-up, dumping or scattering of any objects that hamper passage on public roads, the relevant entities or individuals shall bear tort liability	Article 85 If any damage is caused to others due to the pile-up, dumping or scattering of any physical items that hamper passage on public roads, the infringer of pile-up, dumping or scattering of any physical items shall bear tort liability; and if the manager of road is at fault, the manager of road shall bear corresponding tort liability	In this article, the liability of doer is the first; and the liability of manager is the second
Article 86 If any damage is caused to others due to the breaking of forest trees, the owner or manager of the forest trees shall bear tort liability if it cannot prove that it is not at fault	Article 86 If any damage is caused to others due to the breaking of forest trees at public palaces or public road, the owner or manager of the forest trees shall bear tort liability if it cannot prove that it is not at fault	Add the limitation of “public palaces” and “public road” to this article. If damage is caused by the tree at the forest land contracted by farmer or barren mountain, the owner or manager of the forest land or barren mountain shall not bear tort liability
Article 87 If any damage is caused to others due to failure to place obvious signs and take safety measures when digging holes or repairing or installing underground facilities in a public place, on a roadside or in a passageway, the constructor shall bear tort liability If any damage is caused to others by underground facilities including inspection wells, the manager shall bear tort liabilities if it cannot prove	Article 87 If any damage is caused to others by underground facilities including inspection wells, the manager shall bear tort liabilities if it cannot prove that it has performed its management duties	Move the first paragraph of article 87 of the Second Draft for Examination and Approval to article 72A of this law

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Articles in the Second Draft	Articles of Amending Suggestion	Reasons and Illustration
that it has performed its management duties		
	Article 87A If any damage is caused to others by the escape of water or other liquid, stive, gas and light wave, the owner or manager of this substances shall bear tort liability. If it can be proved that it has performed its management duties, the owner or manager of this substances shall not bear tort liability If the preceding paragraph constitutes liability of polluting environment, the infringer shall have right to request remedy according the Chapter VIII of this law	The case of damage caused by the escape of unmeasurable substances often occurs, and certain provisions thus are necessary (the liability of fault presumption). If the escape of unmeasurable substances reaches the level of polluting environment, the infringer shall have right to request remedy according the Chapter VIII of this law
Chapter XII Supplemental Provision	Chapter XII Supplemental Provision	
Article 92 This Law shall be effective as of <u>(Month)</u> <u>(Date)</u> , <u>(Year)</u>	Article 92 This Law shall be effective as of <u>(Month)</u> <u>(Date)</u> , <u>(Year)</u>	No modification

2.3 Suggested Articles for the Second Draft of the Tort Liability Law for Examination and Approval

CHAPTER I GENERAL PROVISIONS

Section One: Legislative Purposes and Doctrine of Liability Fixation

Article 1 (Legislative Purpose)

This Law is enacted to explicitly defining the tort liability, remedying the damage of victims, preventing torts, and promoting the social harmony and stability.

Article 2 (Definition of Infringer)

Infringer shall bear the tort liability pursuant to this Law. “Infringer” as addressed herein refers to any natural person, legal person or other organizations who commit tortious actions to infringe other persons’ personal and property rights; owner, manager or user of physical items, if the damage is caused by physical items; guardian, school or other educational organization, if damage is caused by a

person without or with limited capacity for civil conduct; and employer if the damage is caused by employee.

Article 3 (Definition of Infringee)

The infringer shall have the right to request the infringer to assume tort liability. “Infringee” as addressed herein refers to any natural person, legal person or other organizations whose civil rights protected pursuant to this Law have been infringed. The exercise of the right to request compensation for adverse consequence caused by the infringement on other person’s civil rights needs to be explicitly stipulated by law.

Article 4 (Fault Liability)

If any person, through his own fault, infringes on other people’s personal and property rights and causes damage, he shall assume the compensation liability.

If the person is presumed to be at fault according to the law, and he is unable to prove that he is not at fault, then he shall be affirmed as being at fault.

Article 5 (Non-fault Liability)

If any legal provisions specify that the fault of infringer is not the important condition, such provision shall govern.

Article 6 (Other Tort Liabilities)

If any legal provisions specify that infringer shall assume other tort liability, infringer shall assume tort liability pursuant to the provisions in Section 3 of Chapter II of this Law

Section Two: Liability for Multiple Torts

Article 7 (Joint Tort Liability)

If two or more persons jointly commit a tort and cause damages to other people, they shall bear joint and several liability.

Article 8 (Abetment and Help)

Anyone who abets or helps another to commit a tort shall bear the joint and several liability with the one who commits the act.

Anyone who abets or helps other people without capacity for civil acts to commit a tort shall assume the entire liability. Anyone who abets or helps other people with limited capacity for civil acts to commit a tort shall assume the major liability.

Article 9 (Liability for Carrying out Common Dangerous Act)

Where two or more persons carry out any act that jeopardizes other people’s personal or property safety, and the act of one or more persons causes damages to other people, if the specific infringing person can be determined, the infringing person shall assume liability; if anyone can prove there is no causation between his acts and damage, he shall not assume compensation liability.

Article 10 (Liability for Gang)

If certain gang members commit a tort and cause damage, the whole members of gang shall bear the joint and several liability; but if any member of gang can prove there is no relation between tort and activities of gang, then the other members of gang shall not bear the joint and several liability.

Article 11 (Concurrence of Reasons)

If two or more persons commit a tort respectively but cause the same damage, and if each one's tort is sufficient to cause the entire damage, all the persons who commit the act shall bear the joint and several liability.

Article 12 (Liability by Share)

If two or more persons commit a tort respectively but cause the same damage, and the degree of cause force can be determined, they shall assume the liability correspondingly; if the degree of cause force is difficult to determine, they shall equally assume the liability for compensation.

Article 13 (Liability of the Third Party)

If the damage is caused by a third party, the third party shall assume the tort liability. If any legal provision specifies that the relevant party shall assume additional or corresponding liability, such provision shall govern.

Article 14 (Right to Choose)

Where any legal provision specifies that the joint and several liability shall be assumed, the infringer shall have the right to request a portion or all of the persons who are jointly and severally liable to assume the liability.

Article 15 (Inner Distribution of the Joint and Several Liability)

The respective compensation amounts of the persons to take the joint and several liability shall be determined based on their respective degree of responsibility; if it is difficult to determine the foregoing, they shall equally assume the compensation liability.

If anyone jointly and severally liable pays an amount exceeding his share, he shall have the recourse against other people jointly and severally liable.

CHAPTER II METHODS OF ASSUMING TORT LIABILITY**Section One: Methods of Assuming Tort Liability and Relation between Tort Liability and Other Legal Liabilities****Article 16 (Major Methods of Assuming Tort Liability)**

The main methods of assuming tort liability are as follows:

- (1) stopping the infringement;
- (2) removing the obstacle;
- (3) eliminating the danger;
- (4) returning the property;
- (5) restoring to original condition or state;
- (6) compensating for damage;
- (7) eradicating effects and restoring reputation; and
- (8) making an apology.

The above methods of assuming tort liability may be applied individually or in combination.

Article 17 (Concurrence of Liability)

Where the infringer shall assume administrative liability or criminal liability for the same act, assumption of the aforesaid liability shall not affect the assumption of the tort liability (if any).

Article 18 (Priority of Civil Compensation)

Where the infringer shall assume the tort liability as well as the administrative liability or criminal liability for the same act, and the infringer's property is not sufficient for the payment, the tort liability shall be prioritized.

Article 19 (Relation with Other Laws)

If any other laws set forth special provisions on the tort liability, those provisions shall be followed.

Section Two: Methods of Assuming Compensation Liability

Article 20 (Compensation for Personal Injury)

Any person who harms other people and causes personal injury shall be subject to compensation for medical expenses, nursing expenses, traveling expenses and other reasonable expenses paid for the purpose of treatment and recovery, as well as income reduced due to the loss of labor hours. In case of causing disability, payment shall be made for disability appliance expenses and disability compensation. In case of causing death, payment shall be made for funeral expenses and death compensation.

If the infringegee dies or becomes physical disability, any person supported by him shall have the right to request the infringer to assume tort liability.

If the infringegee dies, the person who pays for the infringegee's medical expenses, funeral expenses and other reasonable expenses shall have the right to request the infringer to compensate for the foregoing expenses, except for the expenses already paid by the infringer.

Article 21 (Compensation for Property Damage)

In the case of infringing on other people's property, calculation of property loss shall be based on the market price at the time of occurrence of such loss or other methods.

If there is no market price on property loss, a reasonable compensation according to actual situation shall be made.

Article 22 (Compensation of Beneficiary)

If a person suffers damages from preventing or stopping the encroachment on other people's civil rights and interests, the infringer shall assume the liability. If the infringer flees or is unable to assume the liability, the beneficiary shall give appropriate compensation.

Article 23 (Gains Offset the Losses)

If infringegee gets benefits from unlawful behaviors conducted by infringer, the compensation for infringegee shall deduct the benefits achieved by infringegee.

Article 24 (Equally Share the Harmful Consequence)

If both the victim and the person who commits the act are free of any fault with respect to the occurrence of damages, the two parties may share the damage consequence in light of the actual situation.

Article 25 (Mental Compensation for Infringing Rights to Life and Health)

If the infringement on right to life causes death, the close family members of infringegee shall have the right to request the mental compensation. If the infringement on right to health causes disability, infringegee shall have right to request mental compensation.

Article 26 (Mental Compensation for Infringing Personality Rights, Guardianship and Other Personal Status Relationship)

If the intentional or negligent infringement on legal rights and interests of personality or personal status relationship such as guardianship results in serious mental injury, the infringe shall have the right to demand mental compensation.

Article 27 (Mental Compensation for Infringing Personality Interests of the Deceased)

After the death of natural person, his close family members have right to request the compensation for mental damage under any of the following circumstances:

- (1) infringement upon the name, portrait, reputation or honor of a deceased person by insulting, libeling, disparaging, vilifying or by other means contrary to the societal public interests or societal morality;
- (2) illegal disclosure or use of the privacy of a deceased person or infringement upon the privacy by other means contrary to the societal public interests or societal morality; and
- (3) illegal use of or damage to the remains of a deceased person or infringement upon the remains by other means contrary to the societal public interests or societal morality.

Article 28 (Compensation shall be Paid in a Lump Sum)

The compensation for the loss caused already shall be paid in a lump sum. The obligation of compensation emerges at the time of occurring damage. If the compensation for future damage has also been paid in a lump sum, a reasonable legal fruits shall be deducted.

Article 29 (Regular Payments of Compensation)

The compensation for medical expense, nursing expense, rehabilitation expense, expense for self-help tools and living expense of infringe in the future can be paid by the way of regular payments.

If the interested parties reach an agreement on adapting regular payments, the people's court needs to confirm after reviewing whether the agreement breaks the law.

Certain guarantee shall be provided for the application of regular payments.

Section Three: Other Methods of Assuming Tort Liability

Article 30 (Stopping the Infringement)

If the harmful behavior is continuing, the infringe has right to request stopping the infringement.

The injunction of stopping infringement can be issued after accepting the case, in the process of trial, or in the judgement According to the actual situation.

Article 31 (Removing the Obstacle and Eliminating the Danger)

If the harmful behavior jeopardizes or endangers others' personal or property rights, although this harmful behavior has not caused actual damage, any person jeopardized or endangered has right to request removing the obstacle and eliminating the danger.

According to the actual situation, the junction of removing the obstacle or eliminating the danger can be issued after accepting the case or in the process of trial.

If the infringement obstacles the exercise of infringe's rights, the infringer has right to request removing the obstacle according to the preceding paragraph.

Article 32 (Returning the Property Restoring to Original Condition or State)

If infringement processes the property of the infringer, the infringer has right to request returning the property. If infringement causes damage of property, the people's court shall issue injunction of restoring to original condition or state.

If the damaged property cannot recover the value before damage after restoring, the infringer shall bear the compensation liability for derogative value.

If the value of damaged property exceeds its original value after repairing, the infringer shall adequate compensation.

If the property infringed by infringer does not exist anymore, or the damaged property has no more economic rationality, the compensation shall be applied.

Article 33 (Making an Apology, Eradicating Effects and Restoring Reputation)

If the rights to reputation, privacy, freedom, name, honor, portrait, or other personality right has been infringed or personality dignity has been infringed, the infringer has right to request eradicating effects, restoring reputation and making an apology.

The contents of eradicating effects, restoring reputation and making an apology shall be determined by the People's Court.

CHAPTER III CIRCUMSTANCES FOR ASSUMING NO LIABILITY AND MITIGATED LIABILITY

Article 34 (Negligence of Infringer)

Where the infringer is negligently attributable to the damage, the liability of the infringer may be mitigated.

If the damage is caused by the victim intentionally, the person who commits the act shall assume no liability.

Article 35 (Performing Duty According to Laws)

Any person who causes damage at the time of performing his duty according to laws shall not bear tort liability, except for where there are otherwise different provisions.

Article 36 (Self-help)

The right holders may take reasonable steps of self-help if their legal rights and interests are suffering damage and they will no more maintain their legal rights and interests without taking reasonable steps, including the detention of property and the restriction of personal freedom.

In the case of restriction of personal freedom, in addition to take reasonable and necessary steps, the person who loss personal freedom needs to inform the relevant departments in time.

Article 37 (Consent of Infringer and Voluntarily Assuming Risk)

If the infringer consents to the infringement or voluntarily assumes danger and relevant consequences, the infringer shall not bear tort liability.

If harmful behavior exceeds the scope of consent, the infringer shall bear tort liability correspondingly.

If the content of consent breaks law or good social customs, the infringer shall bear tort liability.

Article 38 (Force Majeure)

If any damage is caused to other people for the reason of force majeure, no liability shall be assumed. Where there are otherwise different provisions, such provision shall govern.

Article 39 (Justifiable Defense)

Anyone who causes harm to another for exercising justifiable defense shall not be subject to tort liability. If justifiable defense exceeds the limits of necessity and undue harm is caused, the aggrieved person shall be subject to an appropriate liability.

Article 40 (Emergency Actions Taken to Avoid Danger)

If harm occurs through emergency actions taken to avoid danger, the person who gives rise to the danger shall be subject to the liability. If the danger occurs due to natural causes, the person who takes the emergency actions shall not be subject to any tort liability or shall be given compensation to an appropriate extent. If the emergency measures taken are improper or exceed the limits of necessity and undue harm is caused, the person who takes the emergency actions shall be subject to the liability to an appropriate extent.

CHAPTER IV SPECIAL STIPULATIONS ON LIABLE PARTIES

Section One: Liability of Guardian and Liability for School Accident

Article 41 (Liability of Guardian)

If a person without capacity or with limited capacity for civil acts causes damages to others, his guardian shall bear tort liability. If the guardian has done his duty of guardianship, his tort liability may be mitigated.

If a person who has property but is without capacity or with limited capacity for civil acts causes damages to others, the expenses of compensation shall be paid from his property. If it is insufficient to cover such expenses, the insufficient portion shall be compensated for by the guardian.

Article 42 (Temporary Unconsciousness Act and Act out of Control)

If a person with complete capacity for civil acts commits fault for his temporary unconsciousness act or act out of control, which causes damages to others, he shall bear tort liability according to the degree of fault. If no fault is committed, the infringer shall be compensated according to the economic condition of the infringer.

If a person with complete capacity for civil acts causes damages to others due to his temporary unconsciousness act or act out of control, which is caused by intoxication, anaesthetic or psychotropic drugs abuse, he shall bear tort liability.

Article 43 (Without Capacity for Civil Acts and School Liability)

If a person without capacity for civil acts suffers personal injury in the course of learning or living in a kindergarten, school or other educational organization, the kindergarten, school or other educational organization shall bear liability, and no

liability shall be borne if it can prove that its duty of education or management is fulfilled.

Article 44 (Limited Capacity for Civil Acts and School Liability)

If a person with limited capacity for civil acts suffers personal injury during learning or living in a kindergarten, school or other educational organization, the kindergarten, school or other educational organization shall bear liability if it fails to fulfill its duty of education or management.

Article 45 (School Liability and Liability of a Third Party)

If a person without capacity or with limited capacity for civil acts suffers personal injury during learning or living in the kindergarten, school or other educational organization, which is caused by personnel other than those from the kindergarten, school or other educational organization, the infringer shall be subject to tort liability. If the kindergarten, school or other educational organization fail to fulfill its management duty, they shall bear supplementary liability correspondingly.

Section Two: Liability of Employer, Contractor and Voluntary Worker

Article 46 (Liability of User)

Where any person who is used by user causes damages to others due to performance of his task, the user shall bear tort liability.

The relation between person being used and user will be determined under following circumstances:

- (1) whether user has right to instruct the person being used; and
- (2) whether person being used is working for the interests of user.

Article 47 (Joint and Several Liability of Multiple Users)

Any person being used, who accepts the instructions from two or more users or works for two or more users, causes damages to others due to performance of his task, multiple users shall joint bear the tort liability.

Article 48 (Labor Secondment and Liability of User)

If, during a period of secondment, the seconded working personnel cause damages to others due to performance of their tasks, the party accepting secondment shall be subject to tort liability. If the seconding party commits fault, it shall bear supplementary liability correspondingly.

Article 49 (Joint and Several Liability of the Person Being Used)

Where any person being used intentionally causes damage to others or causes damage to others due to culpable negligence, this person and the user shall bear the joint and several liability.

Article 50 (Liability of Contractor)

Where any contractor causes damages to the third party or himself due to performance of their tasks, ordering party shall not bear compensation liability. The ordering party shall bear compensation liability correspondingly, if he has negligence in customizing, instructing or selecting.

Article 51 (Liability for Damage Caused by the Person of Voluntarily Providing Labor Service)

If any person, who voluntarily provides labor service for the others for free, causes damage to others due to performance of activities of providing labor service, the person being helped shall bear compensation liability. If the person providing labor service causes damages due to his fault or culpable negligence, he shall bear the joint and several liability with the person being helped.

If the person providing labor service suffers personal injury due to the activities of providing labor service, the person being helped shall bear compensation liability. If person being helped clearly refuses the labor service, he shall not bear compensation liability, but he shall provide adequate compensation in the scope of his benefits.

If the person providing labor service suffers personal injury due to the third party, the third party shall bear compensation liability. If the third party cannot be determined or is unable to compensate, the person being helped shall provide adequate compensation.

Section Three: Liability of Network Operator and Liability of Obligor of Safety Protection

Article 52 (Liability of Internet Service Provider)

Where an Internet service provider is aware that users are utilizing its network to commit a tort to other's civil rights and interests, the provider shall be subject to joint and several liability with the users if it fails to take necessary measures. Where network users utilize the network to commit a tort, the infringer shall have the right to notify the Internet service provider to take necessary measures such as deleting, blocking, disconnecting, etc. If the Internet service provider fails to take necessary measures in a timely manner after receipt of the notice, it shall be subject to joint and several liability with the users for the expanded damages.

Article 53 (Liability of Violating Duty of Security Protection)

If managers of a hotel, shopping mall, bank, station, recreation spot or other public amenities or organizers of mass activities fail to fulfill their duty of safety protection and cause damages to others, they shall be subject to tort liability.

If the damages are caused by the act of a third party, the third party shall be subject to tort liability. Where the managers or organizers fail to fulfill their duty of safety protection, they shall bear supplementary liability correspondingly.

CHAPTER V PRODUCT LIABILITY

Article 54 (Definition of Production Liability)

A producer shall bear compensation liability for property damages to other persons due to defects existing in the products.

Article 55 (Defense of Producer)

The producer shall not bear tort liability under the following circumstances:

- (1) the products have not been put into circulation;
- (2) the defects do not exist in the products after they have been put into circulation;
and
- (3) the defects in the products are important to be found due to limited degree of scientific technology.

Article 56 (Definition and Classification of Defects)

Defects refer to any unreasonable danger which may endanger the personal and property security of the others, includes design defect, production defect and warning defect.

Article 57 (Definition of Production)

Production refers to any movable property processed and produced for sell. Electric current in wire transmission and substance in pipeline transport belongs to production.

The provisions in this section shall not be applied to the construction work, but the construction material, components and equipment used for construction work belong to production as mentioned in preceding paragraph, and the provisions in this section shall be applied.

Article 58 (Definition of Producer)

Producer refers to any practitioner engaged in producing and processing production; any person, as the producer of a production, demonstrates his name, title, corporate name or trademark person on the production; or any natural person, legal person or other organizations who can be deemed as the actual producer of the production according to the manufacture, process, form of selling, or other matters.

The importer of production shall be deemed as the producer of imported production.

Article 59 (Liability of Seller)

A seller shall be subject to tort liability for damages to other persons caused by defects existing in the products that result from the fault of the seller.

A seller shall be subject to tort liability if it can neither identify the producer nor supplier of the defective products.

Article 60 (Right of Infringee to Choose)

If damages are caused by defects existing in the products, the infringer may claim for compensation either from the producer or from the seller of the products.

Article 61 (Right to Recourse between Producer and Seller)

If defects in the products are caused by the producer, the seller have the recourse against the producer after it has paid the compensation.

If defects existing in the products are due to the fault of the seller, the producer shall have the recourse against from the seller after it has paid the compensation.

Article 62 (Right of Producer and Seller to Recourse against the Third Party)

If damages to other persons are caused by defects existing in the products that result from the fault of a third party such as the party providing transportation or warehousing, the producer and the seller of the products shall have the right to recover its respective losses from such third party.

Article 63 (Application of Eliminating the Danger and Removing the Obstacles)

If defects in the products endanger the safety of the person or property of others, the infringer shall have the right to ask the producer or the seller to bear tort liability such as elimination of danger, removal of obstacles, etc.

Article 64 (Production Warning and Recall)

If defects are found to exist in the products after they have been put into circulation, the producer or the seller shall take remedial measures such as issuance

of warning, recall of products, etc. in a timely manner. The producer or the seller shall bear tort liability if it has not taken remedial measures in a timely manner or has not made efforts to take remedial measures, thus causing damages.

Article 65 (Special Provision on the Limitation of Action)

The validity period for claiming for compensation for damages due to defects of products is two years, starting from the date when the parties concerned is notified or should have known the matter.

The right of request for compensation claim for damages done due to defects of products shall lose effect after the tenth year after the products shall lose effect after the tenth year after the products with defects that cause damages was first delivered to the users or consumers. However, cases in which the specified safe use period has not been exceeded are exceptions.

Article 66 (Punitive Compensation)

If the products are produced and sold even with known defects therein, causing deaths or severe damage to the health of others, the infringer shall have the right to claim respective punitive damages according to law.

CHAPTER VI LIABILITY FOR TRAFFIC ACCIDENTS CAUSED BY MOTOR VEHICLES

Article 67 (Doctrine of Liability Fixation)

Where a motor vehicle meets with a traffic accident and causes personal injury or death or any property loss, the insurance company shall pay indemnity within the limit of the compulsory third party liability insurance liability for the motor vehicle. The part in excess of the liability limit shall be indemnified according to the following provisions:

- (1) Where a traffic accident occurs between motor vehicles, the faulty party shall bear the liabilities; if both parties are in fault, they shall each bear their proper share of the liabilities; and
- (2) Where a traffic accident occurs between a motor vehicle and a non-motor vehicle driver or a pedestrian, if the non-motor vehicle driver or pedestrian is not in fault, the motor vehicle driver shall bear the liabilities; however, if there is any evidence to prove that the non-motor vehicle driver or the pedestrian is in fault, the motor vehicle driver's liabilities may be properly mitigated in light of the degree of fault; and if the motor vehicle is not in fault at all, the motor vehicle driver shall bear no more than 10 percent of compensation liabilities.

Where the losses of the traffic accident are caused by the deliberate collision of the motor vehicle by a non-motor vehicle driver or a pedestrian, the motor vehicle driver shall bear no liabilities.

Article 68 (Liability of Compulsory Insurance)

If the provision of buying the compulsory insurance has not been followed. The owner of motor vehicle shall bear compensation liability to the extent of the limitation of liability of compulsory motor vehicle insurance.

Article 69 (Rental and Leasing)

If the owner and the user of a motor vehicle are not the same person due to rental or leasing thereof, and the liability for causing a traffic accident lies on the side of the motor vehicle, the insurance company shall make compensation to the extent of the limitation of liability of compulsory motor vehicle insurance. If the insurance is not sufficient to cover such compensation, the user of the motor vehicle shall be liable for the insufficient portion. If occurrence of damages is also due to the fault of its owner, he shall be liable for compensation correspondingly.

Article 70 (Buy and Sale)

In circumstances where a motor vehicle is transferred and delivered between the parties concerned by way of sale and purchase, etc. but the procedures for registration of the transfer of its ownership have not yet been handled, and if the liability for causing a traffic accident lies on the side of such motor vehicle, the insurance company shall make compensation to the extent of the limitation of liability of compulsory motor vehicle insurance. If the insurance is not sufficient to cover such compensation, its transferee shall be liable for the insufficient portion.

Article 71 (Affiliated Business)

If the motor vehicle causes traffic accident and damages the others at the time of operating an affiliated business, the operator of affiliating shall bear the compensation liability. If the operator of affiliating business is unable to bear the compensation liability, the owner of affiliated business shall bear the additional liability.

Article 72 (Buying and Selling Reassembled Motor Vehicle)

If a motor vehicle that is reassembled or reaches the standards for being discarded as unserviceable is transferred by way of sale and purchase, etc. and a traffic accident is caused by it, resulting in damages, its transferor and the transferee shall be jointly and severally liable therefore.

Article 73 (stealing, looting or snatching)

If a traffic accident is caused by a motor vehicle that has been stolen, looted or snatched, resulting in damages, the person who commits the act of stealing, looting or snatching shall be liable for compensation. If the insurance company has paid rescue expenses to the extent of the limitation of liability of compulsory motor vehicle insurance, it shall have the recourse against the person responsible for the traffic accident.

Article 74 (Escape)

If the driver of a motor vehicle flees away from the scene after the occurrence of a traffic accident and the compulsory insurance has been bought for the motor vehicle, the insurance company shall make compensation to the extent of the limitation of liability of compulsory motor vehicle insurance. After such social assistance fund has paid the expenses, the institution managing such fund shall have the recourse against the party responsible for the traffic accident.

Article 75 (Fault of Non-Motor Vehicle)

Where if the traffic accident caused by the fault of pedestrian or party of non-motor vehicle damages the party of motor vehicle or the other, the pedestrian or

the party of non-motor vehicle shall bear compensation liability according to article 7 (1) of this law.

CHAPTER VII PROFESSIONAL LIABILITY

Section One: General Provisions

Article 76 (Definition of Profession)

A professional refers to the person who has intellectual skill, whereby service are offered to the public, usually though not inevitable for reward and requiring professional standards of competence, training and ethics, typically reinforced by some form of official accreditation accompanied by evidence of qualification.

Professional activities refer to the activities that professional offers his intellectual skill to the public. At the time of offering intellectual skill, any professional shall accord with relevant laws, regulations, industry standards and operating instructions.

Article 77 (Definition of Professional Liability)

Any professional shall bear tort liability if he intentionally or negligently causes damage to his client at the time of providing professional service.

If two or more professionals sign legal documents, provide professional opinions or make professional decision jointly, and cause damage to the others, then they shall bear the joint and several liability.

If any professional, who is employed by a special practicing institution, engages in practicing activities in the name of this special practicing institution, then this special practicing institution shall bear tort liability if the professional causes damage to the others at the time of practicing. After making the compensation, the special practicing institution shall have recourse against the professional.

Article 78 (Professional Obligations)

At the time of engaging in practicing, any professional shall maintain the legal rights and interests of his clients by exercising a high degree of duty of care, duty of loyalty and duty of maintaining confidentiality.

The violation of duties as mentioned in the preceding paragraph shall be presumed as being at fault.

Article 79 (Prima Facie Evidence and Service Record)

The infringe shall provide prima facie evidence to prove the professional or practicing institution is at fault and there is causation between the fault of professional or practicing institution and the damage of infringe.

If prima facie evidence is able to prove the fault and causation, the fault and causation shall be presumed to be existed unless the professional and his practicing institution are able to prove there are no fault and causation.

The profession and his practicing institution shall provide all records and materials concerning the case, and the fault and causation shall be presumed to be existed if they forge, falsify or destroy the relevant records and materials.

Section Two Liability for Medical Damage

Article 80 (Definition of Medial Damage Liability)

If a patient is injured in the process of accepting diagnosis and medical treatment and such injury is caused by the fault of medical staff members, the medical staff members shall be liable for compensation.

If medical staff members are employed by medical institutions, the medical institutions shall bear compensation liability.

Article 81 (Duty of Informing and Consent)

The medical staff shall explain to the patient the situation regarding his illness and the measures for medical treatment they will take during diagnosis and medical treatment. If surgery, special examination or special treatment is required, they shall explain to the patient in a timely manner the situation regarding his illness, measures for medical treatment and risk for such treatment, alternative plan for treatment, etc., written consent must be obtained from him. If it is not advisable to explain to the patient, the explanation of the same shall be served to his close family members which written consent shall be obtained.

If medical staff members fail to perform their obligations as mentioned in the preceding paragraph, causing injuries to the patient, the medical institution concerned shall be liable for compensation.

Article 82 (Exception of Duty to Inform and Consent)

If the opinion of a patient or his close family members cannot be obtained due to emergency situations such as rescuing the life of the patient who is in critical condition, corresponding measures for medical treatment may be performed with the approval of the person in charge or the authorized responsible person of the medical institution.

Article 83 (Standards of Duty of Care)

During diagnosis and medical treatment, medical staff members fail to exercise the duty of care corresponding to the current medical treatment level, and cause injuries to the patient, the medical institution concerned shall be liable for compensation.

Article 84 (Confirmation of Fault)

A medical institution will be affirmed to be at fault if injuries are caused to a patient under any of the following circumstances:

- (1) it violates pertinent stipulations of laws, administrative regulations, rules and other specifications regarding diagnosis and medical treatment;
- (2) it hides or refuses to provide medical records in connection with a dispute; and
- (3) it forges, falsify or destroys medical records.

Article 85 (Presumption of Causation)

Where the damage of patient may be caused by the diagnosis and medical treatment of medical staff, a causation between the damage of patient and the diagnosis and medical treatment of medical staff shall be presumed unless the medical staff is able to provide an evidence on the contrary.

Article 86 (Duties of Informing and Cooperating)

The patient shall inform the situation regarding his illness to the medical staff, and cooperate with the medical institution in performing diagnosis and medical

treatment that conforms to therapeutic standards. If the patient has not performed his duty of informing and suffers damage due to misdiagnose. The medical institution shall not be liable for compensation.

Article 87 (Liability of Medical Production)

If a patient gets injured due to defects in medicines and drugs, disinfectants or medical equipment. The patient may claim for compensation from their respective producers or from the medical institution concerned. If the patient claims compensation from the medical institution, the medical institution may have the recourse against such liable producers or the third party.

Article 88 (Liability for the Damage Caused by the Transfusion of Blood)

If a patient gets injured due to the transfusion of blood that is not up to the standard, the patient may claim for compensation from institutions providing the blood or from the medical institution concerned. If the patient claims compensation from the medical institution, the medical institution may have the recourse against institutions providing the blood.

CHAPTER VIII LIABILITY FOR POLLUTING ENVIRONMENT AND DESTRUCTING ECOLOGY

Article 89 (Non-fault Liability for Damage Caused by Polluting Environment)

With respect to any damage caused by polluting environment, the polluter shall bear tort liability.

Article 90 (Pollution Discharge) If pollution discharge causes other persons' damage, the polluter shall bear corresponding compensation liability no matter if the pollution discharge accord with discharge standard or not.

Article 91 (Presumption of Causation)

In the event of any dispute arising from environmental pollution, the causation between the act of discharging pollution and damage shall be presumed; and polluter shall not bear compensation liability if he can prove the non-existence of causation between its act and damage.

Article 92 (Liability for Multiple Polluters)

Two or more than two polluters that have caused environmental pollution, the polluters shall bear their respective liabilities as determined according to such factors as the categories and discharge of pollutants.

Article 93 (Fault of the Third Party)

With respect to any damage arising from environmental pollution caused due to the fault of a third person, the infringe may claim compensation either from the polluter, or from the third party. After the polluter makes the compensation, the polluter shall have recourse against the third party.

Article 94 (Liability for Damage Caused by Destructing Ecology)

Any person who destructs ecology and causes damage of other persons shall bear tort liability according to the provisions in this section.

CHAPTER IX RISK LIABILITY

Article 95 (Non-fault Liability for the Work Involves a High Degree of Danger)

Anyone who engages in work that involves a high degree of danger, such as high altitude, high pressure and high speed means of transportation, and causes damage to others shall bear tort liability.

Article 96 (Fault Presumption Liability of Constructor)

If any damage is caused to others due to failure to place obvious signs and take safety measures when digging holes or repairing or installing underground facilities in a public place, on a roadside or in a passageway, the constructor shall bear tort liability.

Article 97 (Liability for Damage Caused by Dangerous Materials and Facilities)

If any nuclear material, nuclear facilities or civil aircraft causes damage to others, the owner and manager of nuclear material or operator of nuclear facilities and civil aircraft shall bear tort liability, and no liability shall be assumed by the operator if it can prove that the damage has been caused by the victim intentionally.

Article 98 (Liability for Damage Caused by High Hazard Physical Items)

If any possession or use of high hazard physical items including inflammable, explosive, supertoxic or radioactive substances causes damage to others, the possessor or user shall bear tort liability, and no liability shall be assumed by the possessor or user if it can prove that the damage has been caused by the victim intentionally or by a force majeure event.

Article 99 (Liability for Damage Caused by Losing or Abandoning High Hazard Substances)

If any damage is caused due to any loss or abandonment of high hazard substances, the person who loses and abandons high hazard substances shall bear tort liability.

Article 100 (Liability for Damage Caused by Owning and Possessing High Hazard Substances)

If any damage is caused due to the unlawful possession of any high hazard items, the unlawful possessor shall bear the tort liability. If the owner of such high hazard items is unable to prove that it has exercised a high degree of care, it shall be jointly and severally liable with the unlawful possessor.

Article 101 (Negligence of Infringe)

If the operator or constructor of high hazard activities and the owner or manager of high hazard items has taken safety measures and performed the obligation for warning, their compensation liability for any damage caused by unauthorized entry into any area that involves high hazard activities or where high hazard substances are stored shall be mitigated.

CHAPTER X LIABILITY FOR HARM CAUSED BY RAISING ANIMALS

Article 102 (Non-fault Liability for Damage Caused by Raising Animals)

If a domestic animal causes damage to others, the owner or keeper of the animal shall bear tort liability. The liability of the owner or keeper of animals shall be

exempted or mitigated if it can be proved that the damage is caused by the gross negligence of the infringer, and the owner or keeper of animals shall not bear tort liability if it can be proved that the damage is caused by the willful intention of the infringer.

Article 103 (Scattered Animals)

If the damage and loss caused by fighting between scattered animals, and both owners and managers of scattered animals are free of any fault with respect to the occurrence of damages, then both parties shall equally share the harmful consequence.

If one party or both parties are attributable to the damage, then they shall share the harmful consequence correspondingly.

If there is local custom, such custom shall be followed.

Article 104 (Damage Caused by Animals Protected by the State)

Where damage caused by wild animals protected by the state, the infringer shall request the department in charge at the county level for compensation.

Article 105 (Fault of the Third Party)

If any damage is caused to others by any raising animal due to the fault of a third person, the infringer may claim compensation either from the owner or keeper of the animal, or from the third person. After the owner or keeper of the animal bears the liability, the owner or keeper shall have the recourse against the third person.

CHAPTER XI LIABILITY FOR DAMAGE CAUSED BY PHYSICAL ITEMS

Article 106 (Liability for Damage Caused by Building)

If any damage is caused to others due to the collapse, fall or drop of any building, structures or any other facilities or any objects placed or displayed on them, the owner, the manager or the user shall bear tort liability if it cannot prove that it is not at fault.

After the owner, the manager or the user makes compensation, it shall have recourse against other liable persons, if any.

Article 107 (Liability for Damage Caused by the Collapse of any Piled-up Objects)

If any damage is caused to others due to the collapse of any piled-up objects, the person who has piled up the objects shall bear tort liability if he cannot prove that he is not at fault.

Article 108 (Liability for Damage Caused by Objects of Hampering Passage on Road)

If any damage is caused to others due to the pile-up, dumping or scattering of any physical items that hamper passage on public roads, the infringer of pile-up, dumping or scattering of any physical items shall bear tort liability; and if the manager of road is at fault, the manager of road shall bear corresponding tort liability.

Article 109 (Liability for Damage Caused by Trees)

If any damage is caused to others due to the breaking of forest trees at public palaces or public road, the owner or manager of the forest trees shall bear tort liability if it cannot prove that it is not at fault.

Article 110 (Liability for Damage Caused by Underground Facilities)

If any damage is caused to others by underground facilities including inspection wells, the manager shall bear tort liabilities if it cannot prove that it has performed its management duties.

Article 111 (Liability for Damage Caused by Unmeasurable Substances)

If any damage is caused to others by the escape of water or other liquid, stive, gas and light wave, the owner or manager of this substances shall bear tort liability. If it can be proved that it has performed its management duties, the owner or manager of this substances shall not bear tort liability.

If the preceding paragraph constitutes liability of polluting environment, the infringe shall have right to request remedy according the Chapter VIII of this law.

CHAPTER XII SUPPLEMENTAL PROVISION

Article 112 (Time of Implementation)

This Law shall be effective as of (Month) (Date), (Year).



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